

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1390

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

-----X
UNITED STATES OF AMERICA,

Appellee,

-v-

GUILLERMO MORENO, HUGO GOMEZ,
JAIME RAYO, and WILSON ARROYO-ANGULO,

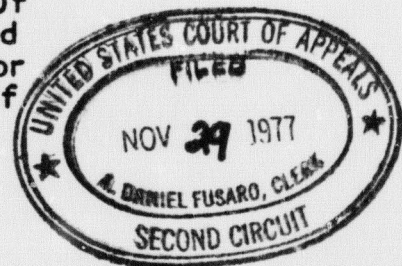
Appellants.
-----X

Docket No. 77-1390

B
P/s

APPENDIX TO BRIEFS FOR APPELLANTS

Appeal From A Judgment Of
Conviction In The United
States District Court For
The Southern District Of
New York



Ira Leitel, Esq.
188 Montague Street
Brooklyn, New York 11201
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Raphael H. Beauduy, Esq.
11 Broadway
New York, New York 10004
Attorney for Appellant Gomez

David Blackstone, Esq.
401 Broadway
New York, New York 10013
Attorney for Appellant Rayo

Martin Erdmann, Esq.
Federal Defender Services Unit
Appeals Bureau
The Legal Aid Society
509 United States Courthouse
Foley Square
New York, New York 10007
Attorney for Appellant Arroyo

PAGINATION AS IN ORIGINAL COPY

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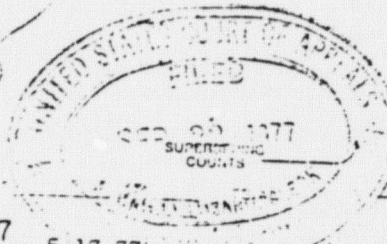
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OFFENSE NO
0208 1 0860

U.S. MORENO, GUILLERMO,
a/k/a "Pimiento"

02 15 77 0102 01

21:846
21:812, 841(a)(1)
& 841(b)(1)(a)
Consp. to violate Federal Narcotics Laws
Distr. & possess. of Cocaine, II



2-15-77 2-24-77 5-17-77 6-23-77 7-21-77
X 2-24-77 X 5-17-77 X
X 2-28-77 X
X 5-4-77 6-23-77

Search Warrant	Issued	Return	Summons	Served	Arrest Warrant	Issued	Complaint	Filed
OFFENSE								MAGISTRATE

U.S. Attorney of Asst.
Constance Cushman
791-9099

ATTORNEYS
Ira Leitel
188 Montague St.
Bklyn. NY 11201--596-1600

Show last names and suffix numbers of other defendants on same indictment information
Gomez-02, Rayo-03, Arroyo-Angulo-04, Doe-05

DATE	DOCUMENT NO.	PROCEEDINGS
2-15-77		Filed Indictment. B/W Ordered. Bail fixed at 5 million dollars. Indictment Ordered sealed until further order of the Court.....Tenney, J.
2-18-77		Indictment Ordered unsealed.....Tenney, J. B/W Issued
2-24-77		Deft. not present. Court directs a not guilty plea be entered. Case assigned to Duffy, J. for all purposes.....Frankel, J.
2-23-77		Filed Superseding Indictment & referred to Duffy, J.Frankel, J.
3-25-77		Atty. present...Deft PLEADS NOT GUILTY thru interpreter..Bail set in amount of \$500,000 CASH..Deft REMANDED in lieu of bail. Duffy, J.
4-29-77		PRE-TRIAL CONFERENCE HELD & ADJOURNED to 5-6-77. 3-4-29-77 E-1 All DEFTS present W/Counsel. Interpreters NORMA SELTZER, HIMA YAM & GLADYS MATOS Present. DEFT ARROYO-ANGULO moves for a Bail Reduction-upon consideration-Bail will remain the same.DUFFY, J

-over-

A

77-1390

JUDGE DUFFY

IS-3
CFF

	77Cr.102 KTD G.MORENO	PAGE TWO	V. EXCLUDABLE DELAY
5-4-77	Filed Superseding Indictment & referred to Duffy, J.Knapp, J.		A. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-9-77	Filed notice of appearance of Ira Leitel as attorney for deft.		
*** 5-6-77	All defts except JOHN DOE..Govt.moves to NOLLE this indictment orally...Leave to Orally file nolle prosequ;Granted...Duffy,J..		B. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-11-77	Filed affdvt.& notice of motion for a bill of particulars, to inspect and copy, to inspect Grand Jury minutes, to suppress etc.....Retv 5-13-77....		C. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-11-77	Filed 1 manila envelope contents order sealed and placed in vault in Clerks office.(affdvt.application & order-Cushman,AUSA) Duffy,J.....		D. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-12-77	Filed deft's/supplemental notice of motion for an order authorizing counsel to obtain the services of an interpreter to assist deft in the trial of this action,etc.RET:5-13-77		E. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-6-77	2nd superseding indictment..A plea of not guilty entered. Bail condition on orig. & first superseding indictment are to cover this 2nd superseding indictment. Trial set for 5-17-77..All defts remanded in lieu of bail....Duffy,J...		F. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-17-77	WADE HEARING BEGUN & CONCLUDED. DECISION RESERVED. ,DUFFY;J		G. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-17-77	Filed Courts exhibit A ordered sealed and placed in vault in Clerks Office....Duffy,J...		H. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-17-77	Filed Courts exhibit B ordered sealed and placed in vault in Clerks Office....Duffy,J..		I. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-17-77	Filed Courts exhibit C ordered sealed and placed in vault in Clerks office...Duffy,J...		J. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-17-77	Filed Courts exhibit D ordered sealed and placed in vault in Clerks office.....Duffy,J....		K. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-19-77	Filed Govt's Affidavit in opposition to deft's pretrial motions, by Constance Cushman, AUSA.		L. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-24-77	Filed memo endorsed on motion filed 5-11-77...Motion disposed of in accordance with minutes of May 17-77..Duffy,J...m/n		M. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-24-77	Filed memo endorsed on suppl.motion filed 5-12-77..Motion disposed of..see minutes of 17 May 77.....Duffy,J.....m/n		N. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
*** 5-17-77	Counsel present ,Interpreters present..Trial begun -Jury		O. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-18-77	Trial cont d Court declares a Mistrial. Jurors discharged		P. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-23-77	All counsel and Interpreters present & sworn..TRIAL BEGUN with Jury		Q. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-24-77	Trial cont d. Opening statements by Govt and all defts except ARROYO who waives		R. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-25-77	Trial cont'd. Interpreters sworn..		S. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821
5-24-77	Wade hearing cont'd.from 5-17-77 & concluded(See minutes of today)		T. Excluded delay under 28 U.S.C. 1815 and 28 U.S.C. 1821

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U.S. vs.

GUILLELMO MORENO

Pg. 3

77 0102 01

Yr. Docket No. Def.

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
5-31-77	Filed transcript of record of proceedings, dated 3-25-77				
5-26-77	Trial cont'd.				
5-27-77	Trial cont'd. Interpreter G. Lanas sworn. Trial adj'd to 5-31-77				
5-31-77	Trial cont'd.				
6-1-77	Trial cont'd.				

5-31-77	Filed courts exhibit 3502 ordered sealed & placed in vault Duffy, J.				
6-6-77	Filed envelope contents ordered sealed and placed in vault (Exhibit 3503A)				
6-8-77	Filed Govts proposed examination of prospective jurors....				
6-8-77	Filed affdvt. of G. Moreno in support of atty's application for issuance of subpoenas etc....				
06-09-77	Filed CJA COPY 2 approving paymer Luz Helena Pulgarin G. interpreter, 41-11 40th St. A. 1B Sunnyside, NY 11104 Dated: 6-1-77 DUFFY, J (mailed copy 1 to AO)				
06-09-77	Filed CJA COPY 5 authorizing the expert service of Luz Helena Pulgarin G. Dated: 5-25-77. DUFFY, J (mailed copy 4 to AO)				
06-09-77	Filed CJA COPY 2 approving payment to: Juan Guerra, Interpreter 43-10 44th St. (2G) LIC, NY 11104 Dated: 6-2-77 DUFFY, J (mailed copy 4 to AO)				
06-09-77	Filed CJA COPY 5 authorizing the expert service of Juan Guerra Dated: 5-21-77. DUFFY, J (mailed copy 4 to AO)				
06-09-77	Filed CJA COPY 2 approving payment to: Gladys Matos, interpreter 64-36 65 Lane, Maspeth, NY 11379. Dated: 6-3-77. DUFFY, J (mailed copy 1 to AO)				
06-09-77	Filed CJA COPY 5 authorizing the expert service of Gladys Matos, Dated: 6-3-77. DUFFY, J (mailed copy 4 to AO)				
*06-02-77	TRIAL CONTINUED.				
06-03-77	TRIAL CONTINUED.				
06-06-77	TRIAL CONTINUED.				
06-07-77	TRIAL CONTINUED - adj to 6-9-77.				
06-09-77	TRIAL CONTINUED. Interpreter Manuel Ras sworn.				
06-09-77	BEFORE DUFFY, Hearing Begun RE: Identification of Deft. HEARING CONCLUDED. "Motion to Suppress identification of deft DENIED."				
06-10-77	TRIAL CONTINUED.				

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CONTINUED ON PAGE 4.

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Interval (per Section II) Start Date End Date Ltr. Total Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

PG. 4.

77 CR 102

MORENO, GUILLERMO

77 CR 102

DATE	PROCEEDINGS (continued)	DUFFY, J	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
06-10-77	BEFORE DUFFY, J Hearing Begun to Confer immunity on two Gov't Witnesses - in presence of Jury. Hearing Concluded (see minutes 6-10-77)					
06-10-77	Filed Gov't's application for an order of immunity re witness: ALTON W. GOOCH.					
06-10-77	Filed Gov't's application for an order of immunity re witness: RACHELL COTTONREADER.					
06-10-77	Filed order that Rachell Cottonreader give testimony pursuant to 18:6002***Duffy, J.....					
06-10-77	Filed order that Alton W.Gooch give testimony pursuant to 18:6001***Duffy, J....					
6-13-77	Trial cont'd.					
6-14-77	Trial cont'd.					
6-15-77	Trial cont'd.					
6-16-77	Trial cont'd. Alt. Juror #3 Excused from jury..Govt rests. Deft Ahon-Casquete's counsel moves orally to dismiss the indictment-Motion Granted..Deft discharged from the custody of the U.S. Marshal...					
6-17-77	Trial cont'd. Deft rest..trial adjd to 6-20-77...					
6-17-77	Filed Court Exhibit AA - assorted 3500 material..Ordered sealed and placed in vault in clerks office.....Duffy, J....					
6-23-77	Filed CJA 21 COPY 2 approving payment to Juan Guerra, interpreter 43-10 44th St. 2G, Long Island City, NY Dated: 6-10-77 DUFFY, J (mailed copy 1 to AO)					
6-23-77	Filed CJA 21 COPY 5 authorizing the expert service of Juan Guerra, interpreter. Dated: 6-10-77. DUFFY, J (mailed copy 4 to AO)					
* 5-6-77	Gov't moves to Nolle this indictment orally. LEAVE TO ORALLY NOLLE PROSEQUI GRANTED. DUFFY, J					
6-20-77	TRIAL CONTINUED. - Summations.					
6-21-77	TRIAL CONTINUED. - Charge by the Court-Jury begins deliberations Jury retires for night.					
6-22-77	TRIAL CONTINUED. Jury resumes deliberation. Jury retires for night.					
6-23-77	TRIAL CONTINUED. Jury resumes deliberations. Jury returns with a verdict of "GUILTY" as to each count and as to each of the defendants remaining on trial. Jury polled. Pre-sentence Reports Ordered. Sentence date- Jul 21, 1977. Bail revoked as to deft MORENO. Deft MORENO Remanded. All other defts remanded. Jury discharged. DUFFY, J					

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Interval
(per Section II)

Start Date
End Date

Ltr. Total
Code Days

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

GUILLERMO, MORENO

PG. 5.

77 0102 01
Yr. Docket No. Def.

DATE	PROCEEDINGS (continued)	DUFFY, J	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
6-27-77	(Document No.) Filed CJA Form 21 COPY 2 approving payment to Juan Guerra, 43-10, 44th St. (29) Long Island City, NY 11104 Dated: 6-17-77. DUFFY, J (mailed copy 1 to AO)					
6-27-77	Filed CJA Form 21 COPY 5 authorizing the expert service of Juan Guerra, interpreter. Dated: 6-17-77. DUFFY, J					
7-5-77	Filed CJA 21 COPY 2 approving payment to Juan Guerra, interpreter 43-10 44th St. Apt. 2G Long Island City, new York 11104 Dated: 6-22-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Juan Guerra, interpreter, Dated: 6-22-77. DUFFY, J (mailed copy 4 to AO)					
7-5-77	Filed CJA 21 COPY 2 approving payment to Juan Guerra, interpreter Dated: 6-30-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Juan Guerra, interpreter. Dated: 6-27-77. DUFFY, J (mailed copy 4 to AO)					
* 7-1-77	filed CONTENTS ORDERED SEALED AND PLACED IN VAULT IN CLERKS OFFICE. (Pre-Sentence Report-E.Rivas Transcripts undated). DUFFY, J					
7-18-77	Filed transcript of record of proceedings dated: May 6, 1977					
7-18-77	Filed transcript of record of proceedings dated: May 17, 23, 24, 25, 26, 27, 31, 1977 June 1, 2, 3, 1977.					
7-18-77	Filed transcript of record of proceedings dated: June 6, 7, 8, 9, 10, 13, 14, 1977.					
7-18-77	Filed transcript of record of proceedings dated: June 15, 16, 17, 20, 1977 June 21, 22, 23, 1977.					
* 7-11-77	Filed motion of deft to set aside the verdict of the jury, etc.					
7-21-77	Filed Memo Endorsed on motion filed 7-11-77..... Motion denied. So ordered. DUFFY, J m-n notified US Atty.					
7-22-77	Filed Govt 's sentencing memorandum.					
* 7-21-77	Filed Judgment (Atty. Ira Leitel, present) Interpreter - Juan Guerra present -The defendant is committed for imprison- ment for a period of FIFTEEN(15) YEARS on count 1. FIFTEEN(15) YEARS on count 2. Sentence on count 2 to run CONSECUTIVELY to sentence on count 1. Pursuant to the provisions of Title 21, United States Code, Section 841 the defendant is placed on Special Parole for a term of THREE(3) YEARS to commence upon expiration of confinement. DUFFY, J Entered on - 7-26-77 Issued Commitment and Copies.					
CONTINUED ON PAGE 6.						

AO 256A

Interval Start Date Ltr. 7-
(per Section III) End Date Code

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

PAGE 6.

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DATE	PROCEEDINGS (continued) (Document No.) DUFFY, J	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7-26-77	rec'd from court Filed deft's affidavit and notice of motion for an order for a new trial etc. RET :7-21-77.				
7-26-77	Filed memo endorsed on motion filed 7-26-77.....Motion denied. So Ordered. DUFFY, J m-n notified US Atty.				
8-1-77	Filed CJA 21 COPY 2 approving payment to Juan Guerra, interpreter 43-10 44th St. (2G) LIC NY 11104 . Dated 7-28-77. DUFFY, J (mailed copy 1 to AO)				
8-1-77	Filed CJA 21 COPY 5 authorizing the expert service of Juan Guerra, interpreter. Dat ed: 5-18-77. DUFFY, J (mailed copy 4 to AO)				
8-3-77	Filed commitment and entered return - Deft delivered to: M.C.C. on: 7-21-77.				
8-3-77	Filed Remand in the sum of \$500,000 CASH. That prisoner be remanded in lieu of bail. Dated: 3-25-77.				
* 7-25-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from judgment filed 7-21-77. Copy mailed to: atty for deft Ira Leitel, 188 Montague St. Brooklyn, N.Y. 11201 and copy to U.S. Attorney.				

AO 256A

Interval
(per Section II)

Start Date
End Date

Ltr Filed
Code Days

U.S. DISTRICT COURT
OFFENSE NO. 0208 1 0860
GOMEZ, HUGO,
a/k/a "The Chemist"
U.S. MAG. CASE NO. 77 0102 02
FELONY Fe: X
JUVENILE
U.S. DISTRICT COURT
OFFENSE NO. 0208 1 0860
GOMEZ, HUGO,
a/k/a "The Chemist"
U.S. MAG. CASE NO. 77 0102 02
FELONY Fe: X
JUVENILE

U.S. TITLE SECTION
21:846
21:812, 841(a)(1)
& 841(b)(1)(a)
OFFENSES CHARGED
Consp. to violate Federal Narcotics Laws
Distr. & possess. of Cocaine, II
ORIGINAL COUNTS
1
2
BAIL - RELEASE
AMT
Set
Date
Conditions
10% Deposit
Surety Bond
Collateral
3rd
Other

KEY DATES & INTERVALS
ARREST or
U.S. Custody Began
Summons Served
First Appearance
INDICTMENT
High Risk Date
Indict. Waived
In Charging District
ARRAIGNMENT
Information
2-15-77
Superseding
Indict/info
2-28-77
5-4-77
Trial Set For
2-24-77
1st Plea
2-24-77
Final Plea
Vow Owe
5-17-77
Trial Began
5-17-77
Trial Ended
6-23-77
Disposition
6-23-77
7-21-77
On All Charges
On Lesser *
Offense(s)
Dismissed: WOP: WP
On Government's Motion

U.S. DISTRICT COURT
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GOMEZ, HUGO,
a/k/a "The Chemist"
U.S. MAG. CASE NO. 77 0102 02
FELONY Fe: X
JUVENILE

77 CR 102

HUGO GOMEZ

IV. PROCEEDINGS (continued) DUFFY, J PAGE TWO

EXCLUDABLE DEBT

4-14-77 DEFT (No Appearance by counsel) - Interpreter Graciella Lanus - Court directs entry of Not Guilty plea. Deft REMANDED in lieu of bail. DUFFY, J

4-29-77 PRE-TRIAL CONFERENCE HELD & ADJOURNED to 5-6-77. All DEFTS present W/Counsel. Interpreters NORMA SELTZER, HIMA YANG & GLADYS MATOS Present. DEFT ARROYO-ANGULO moves for a Bail Reduction-upon consideration-Bail will remain the same. DUFFY, J 3-4-29-77 E-1

5-4-77 Filed Superseding Indictment & referred to Duffy, J.
.....Knapp, J.

5-9-77 Filed notice of appearance of Raphael H. Beauduy, as attorney for deft.

5-6-77 All defts except JOHN DOE....GOVT. MOVES to Nolle this indictment orally. Leave to Orally file nolle prosqui; Granted....Duffy, J.

5-6-77 2nd. superceding indictment...A plea of Not Guilty entered. Bail conditions on orig. & first superceding indictment are to cover this 2nd superceding indictment...Trial set. for 5-17-77..
Ex Deft moves for a reduction of bail..Upon consideration bail will remain the same...All defts remanded in lieu of bail..
Duffy, J.....

5-17-77 WADE HEARING BEGUN & CONCLUDED. "DECISION RESERVED" DUFFY, J

5-17-77 Counsel present - Ira Leitel, Raphael Beauduy, Norman Greene, John P. Curley & Leonard Levenson. Interpreters present - Gladys Matos, Dena Kohn & Maria Cardenas
TRIAL BEGUN - Jury Selection.

5-18-77 Trial cont'd with Jury Selection..The Court declares a MISTRIAL. Jurors discharged. Case to commence to trial May 23-77 at 10a.m.

5-23-77 ALL counsel present - Interpreters present & sworn TRIAL BEGUN with jury

5-24-77 Trial cont'd.-Interpreter Daisy Montardit sworn..Opening statements by the Govt. and all defts except ARROYO who waives.

5-25-77 Trial cont'd. Interpreters M. Cartagena & A. Zevallos sworn..

5-25-77 Filed transcript of record of proceedings, dated 4-14-77

5-24-77 Wade hearing cont'd. from 5-17-77 concluded (See minutes of of today)

5-31-77 Filed transcript of record of proceedings, dated 4-28-77 H

- See PAGE 3 -

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	C.D. NUMBER	DATE	RECEIPT NUMBER	C.D. NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

HUGO GOMEZ

DUFFY, J.

77 0102
Yr. Docket

DATE	PROCEEDINGS (continued) (Document No.)	V. EXCLUDABLE	
		(a)	(b)
5-26-77	Trial cont'd.		
5-27-77	Trial cont'd. Interpreter G.Lanas sworn. Trial adj to 5-31-77		
5-31-77	Trial cont'd.		
6-1-77	Trial cont'd.		
06-09-77	Filed CJA 21 COPY 2 approving payment to:Luz Helena Pulgarin Interpreter,41-11 40th St. Apt.1B Sunnyside,Ny 11104 Dated: 6-2-77.DUFFY,J (mailed copy 1 to AO)		
06-09-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz Helena Pulgarin.Dated:6-2-77.DUFFY,J (mailed copy 4 to AO)		
*06-02-77	TRIAL CONTINUED.		
06-03-77	TRIAL CONTINUED.		
06-06-77	TRIAL CONTINUED.		
06-07-77	TRIAL CONTINUED -adj. to 6-9-77.		
06-09-77	TRIAL CONTINUED. Interpreter Manuel Ras sworn.		
06-10-77	TRIAL CONTINUED.		
06-10-77	BEFORE DUFFY,J - Hearing Begun t confer immunity on two Gov't Wintesses:- in presence of Jury Hearing Concluded.(see minutes 6-10-77)		
6-13-77	Trial cont'd.		
6-14-77	Trial cont'd.		
6-15-77	Trial cont'd.		
6-16-77	Trial cont.d. Alt. Juror #3 Excused from jury..Govt rests. Deft Ahon-Casquete's counsel moves orally to dismiss the indictment-Motion Granted..Deft discharged from the custody of the U.S.Marshal..		
6-17-77	Trial cont'd. Deft rest..trial adjd to 6-20-77...		
6-23-77	Filed CJA 21 COPY 2 approving payment to Luz Helena Pulgarin 41-11 40 Street Apt. 1B Sunnyside,NY 11104. Dated: 6-10-77 DUFFY,J (mailed copy 1 to AO)		
6-23-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz HELENA Pulgaring,interpreter Dated: 6-10-77.DUFFY,J (mailed copy 4 to AO)		
* 5-6-77	Gov't moves to Nolle this indictment orally, LEAVE TO ORALLY NOLLE PROSEQUI GRANTED. DUFFY,J		
6-20-77	TRIAL CONTINUED - Summations		
6-21-77	TRIAL CONTINUED - Charge by the Court-Jury begins deliberations. Jury retires for night.		
6-22-77	TRIAL CONTINUED. Jury resumes deliberations.Jury retires for night.		

CONTINUED ON PAGE 4.

DATE	PROCEEDINGS (continued)	DUFFY, J	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
6-23-77	TRIAL CONTINUED. Jury resumes deliberations. Jury returns with a verdict of "GUILTY" as to each count and as to each of the defendants remaining on trial. Jury polled. Pre-sentence Reports Ordered. Sentence date-Jul 21, 1977. Bail revoked as to deft MORENO. Deft MORENO Remanded All other defts remanded. Jury discharged. DUFFY, J					
6-27-77	Filed CJA 21 COPY 2 approving payment to: Luz Helena Pulgarin 41-11 40th St. Apt. 1B, Sunnyside, New York 11104. Dated: 6-15-77. DUFFY, J. (mailed copy 1 to AO)					
6-27-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz Helena Pulgarin, interpreter. dated: 6-15-77. DUFFY, J (mailed copy 4 to AO)					
7-5-77	Filed CJA 21 COPY 2 approving payment to: Luz Helena Pulgarin interpreter, Dated: 6-27-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz Helena Pulgarin, interpreter. Dated: 6-22-77. DUFFY, J (mailed copy 4 to AO)					
7-5-77	Filed CJA 21 COPY 2 approving payment to: Luz Helena Pulgarin Interpreter, Dated: 6-28-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz Helena Pulgarin, interpreter. Dated: 6-27-77. DUFFY, J (mailed copy 4 to AO)					
7-5-77	Filed CJA 21 COPY 2 approving payment to: Luz Helena Pulgarin. interpreter, Dated: 6-28-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz Helena Pulgarin, interpreter. Dated: 6-28-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Luz Helena Pulgarin interpreter. Dated: 6-25-77. DUFFY, J (mailed copy 4 to AO)					
7-11-77	Filed motion of deft to set aside the verdict of the jury. etc.					
7-18-77	Filed transcript of record of proceedings dated: May 6, 1977					
7-18-77	Filed transcript of record of proceedings dated: May 17, 23, 24, 25, 26, 27, 31, 1977 June 1, 2, 3, 1977.					
7-18-77	Filed transcript of record of proceedings dated: June 6, 7, 8, 9, 10, 13, 14, 1977.					
7-18-77	Filed transcript of record of proceedings dated: June 15, 16, 17, 20, 1977 June 21, 22, 23, 1977.					
7-21-77	Filed Memo Endorsed on motion filed 7-11-77..... Motion denied. So Order ed. DUFFY, J m-n notified US Atty.					
7-22-77	Filed Govt's sentencing memorandum.					

CONTINUED ON PAGE 5.

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

GOMEZ, HUGO

77 102

Yr. | Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE C
	(Document No.)	(a) (b)
* 7-21-77	Filed Judgment (Atty. Raphael Beauduy, present) Interpreter Luz Helena Pulgarin present - The defendant is committed for imprisonment for a period of FIFTEEN (15) YEARS on count 1. FIFTEEN (15) YEARS on count 2. Sentence on count 2 to run concurrently with sentence on count 1. Sentence on counts 1 & 2 are to run CONSECUTIVELY to sentence imposed in District of Oregon on July 11, 1977. Pursuant to the provisions of Title 21, United States Code, Section 841 the defendant is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of confinement. DUFFY, J Entered on - 7-26-77. Issued Commitment and Copies.	
7-25-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from Judgment filed on 7-21-77. copy mailed to atty for deft Raphael Beauduy, 11 Broadway NYC. and U.S. Atty.	

CRIMINAL DOCKET - U.S. District Court

OFFENSE NO. 0208 1 0860
 MEANOR MIS
 FELONY: ☒ District Office

RAYO, JAIME,
 a/k/a "Rayito"

Case Filed
 Mo. Day
 02 15

77 0102

03

U.S. TITLE/SECTION

21:846
 21:812, 841(a)(1)
 & 841(b)(1)(a)

OFFENSES CHARGED

Consp. to violate Federal Narcotics Laws
 Distr. & possess. of Cocaine, II

ORIGINAL COUNTS

1
 2

U.S. MAG.
 CASE NO.

BAIL - RELEASE

☐ Denied ☐ AMT ☐ Fugitive
☐ Set ☐ Pers. Recog
☐ PSA
 \$ 000 conditions
☐ Date ☐ 10% Deposit
☐ Bail Not Made ☐ Surety Bond
☐ Status Changed ☐ Collateral
 (See Docket) ☐ 3rd ☐ Pay Cust ☐ Other

II. KEY DATES & INTERVALS

ARREST or U.S. Custody Began
 High Risk Date
 Summons Served
 First Appearance
 Indictment Information ☐
 Indict. Waived ☐
 In Charging District
 Superseding Indict/Info ☐
 2-15-77
 2-24-77
 2-24-77
 2-28-77
 5-4-77
 Arraignment
 Trial Set For
 1st Plea
 Final Plea
 2-24-77
 5-17-77
 5-17-77
 6-23-77
 Trial
 Voir Dire ☐
 Trial Began ☐
 Trial Ended
 6-23-77
 Sentence
 Disposition
 6-23-77
 7-21-77
☒ Convicted ☐ On All Charge
☐ Acquitted ☐ On Lesser Offense(s)
☐ Dismissed: ☐ WOP: ☐ WIF
☐ On Government's Motion

MAGISTRATE

SEARCH WARRANT	DATE	INITIAL NO.	INITIAL APPEARANCE DATE	INITIAL NO.	OUTCOME
Issued			PRELIMINARY EXAMINATION OR REMOVAL HEARING		DISMISSED
Return			Date Scheduled		HELD FOR GJ OR OTHER PROCEEDING IN THIS DISTRICT
Issued			Date Held		HELD FOR GJ OR OTHER PROCEEDING IN DISTRICT BELOW
Served			WAIVED NOT WAIVED	Tape Number	
Arrest Warrant Issued			INTERVENING INDICTMENT		
COMPLAINT					
OFFENSE (in Complaint)					

U.S. Attorney or Asst.

Constance Cushman
 791-9099 215

ATTORNEYS

Guggenheimer & Untermeyer

80 Pine St. NYC
 344-2040

Show last names and suffix numbers of other defendants on same indictment information.

Moreno-01, Gomez-02, Arroyo-Angulo-04, Doe-05

DATE	DOCUMENT NO.	PROCEEDINGS	EXCLUDABLE DELAY
2-15-77		Filed Indictment. B/W Ordered. Bail fixed at 1 million dollars. Indictment Ordered sealed until further Order of the Court....Tenney, J. B/W Issued.	
2-18-77		Indictment Ordered unsealed.....Tenney, J.	
2-24-77		Def. not present. Court directs a not guilty plea be entered. Case assigned to Duffy, J. for all purposes.....Frankel, J.	
2-28-77		Filed Superseding Indictment & referred to Duffy, J.Frankel, J.	
2-28-77		Filed Affidavit of Constance Cushman, AUSA in support of a Writ. RET: 3-8-77.	
3-8-77		No Appearances MARKED OFF CALENDAR. EDELSTEIN, CH J.	
4-11-77		Filed affdvt. of C. Cushman, AUSA in support of a writ.. Ret. 4-18-77....	
4-13-77		Filed CJA 23 defts financial affdvt.	

DATE	77Cr.102 KTD JAIME RAYO PROCEEDINGS (CONTINUED)	PAGE TWO	V. EXCLUDABLE DELAY
4-15-77	Filed notice of appearance by Guggenhemer & Untermeyer 80 Pine St. NYC		
4-14-77	DEFT - (Atty present-Harold Baer Jr.) Deft pleads Not Guilty thru interpreter Graciella Lanus. Deft continued REMANDED in lieu of bail. DUFFY, J		
4-29-77	PRE-TRIAL CONFERENCE HELD & ADJOURNED to 5-6-77. All DEFTS present W/Counsel. Interpreters NORMA SELTZER, HIMA YANG & GLADYS MATOS Present. DEFT ARROYO-ANGULO moves for a Bail Reduction-upon consideration-Bail will remain the same. DUFFY, J		3-4-29-77 E-1
5-4-77	Filed Superseding Indictment & referred to Duffy, J.Knapp, J.		
5-6-77	All defts except JOHN DOE..Govt moves to Nolle this indictment orally. Leave to Orally file nolle prosequi; Granted..Duffy, J..		
5-6-77	2nd superseding indictment..A plea of Not Guilty entered. Bail conditions on orig. & first superseding indictment are to cover this 2nd superseding indictment..Trial set for 5-17-77..Deft remanded in lieu of bail...Duffy, J.		
5-17-77	WADE HEARING BEGUN & CONCLUDED. "DECISION RESERVED" DUFFY, J		
5-17-77	Counsel present - Ira Leitel, Raphael Beauduy, Norman Greene, John P. Curley & Leonard Levenson. Interpreters present - Gladys Matos, Dena Kolm & Maria Cardenas TRIAL BEGUN - Jury Selection.		
5-18-77	Trial cont'd with Jury Selection..The Court declares a MISTRIAL. Jurors discharged. Case to commence to trial May 23-77 at 10a.m.		
5-23-77	ALL counsel present - Interpreters present & sworn TRIAL BEGUN with jury		
5-24-77	Trial cont'd.-Interpreter Daisy Montardit sworn..Opening statements by the Govt. and all defts except ARROYO who waives.		
5-25-77	Trial cont'd. Interpreters M. Cartagena & A. Zevallos sworn..		
5-25-77	Filed transcript of record of proceedings, dated 4-14-77		
5-24-77	Wade hearing cont'd. from 5-17-77 concluded(See minutes of today)		
5-26-77	Trial cont'd.		
5-27-77	Trial cont'd. Interpreter G. Lanus sworn. Trial adj to 5-31-77		
5-31-77	Trial cont'd.		
6-1-77	Trial cont'd.		

FINE AND RESTITUTION PAYMENTS					
DATE	RECEIPT NUMBER	CO NUMBER	DATE	RECEIPT NUMBER	CO NUMBER

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

U. S. vs

77CR.102 K.T.D.

JAIME RAYO

77 102
Yr. Docket No.

DATE	PROCEEDINGS (continued) <i>PAGE 3</i>	V. EXCLUDABLE C (a) (b)	
June 7-77	(Document No.) Filed order that payment of fees in connection with the service of a subpoena duces tecum on Bay Ridge High School is excused. Duffy, J..... m/n		
June 8-77	Filed defts proposed voir dire...		
06-09-77	Filed CJA 21 COPY 2 approving payment to MS Maria Elena Cardenas, 49 East 96th St. NYC 10028, interpreter, Dated: 6-1-77. DUFFY, J (mailed copy 1 to AO)		
06-09-77	Filed CJA 21 COPY 5 authorizing the expert service of MS. Maria Elena Cardenas Dated: 5-17-77. DUFFY, J (mailed copy 4 to AO)		
* 06-02-77	TRIAL CONTINUED.		
06-03-77	TRIAL CONTINUED.		
06-06-77	TRIAL CONTINUED.		
06-07-77	TRIAL CONTINUED. adj. to 6-9-77.		
06-09-77	TRIAL CONTINUED. Interpreter Manuel Ras sworn.		
06-10-77	TRIAL CONTINUED.		
06-10-77	BEFORE DUFFY, J-Hearing begun to confer immunity on two Gov't Witnesses - in presence of Jury. Hearing Concluded. (See minutes 6-10-77)		
06-16-77	Filed CJA Form 20 COPY 2 approving payment to: Ms. Maaria Edna Caidenas, 49 East 96th St. New York, NY Apt. 2B 10028. Dated: 6-2-77. DUFFY, J. (mailed orig CJA copy 1 to AO Wash. D.C.)		
06-16-77	Filed CJA Form 20 COPY 5 appointing Maria Edna Caidemas as atty for deft. Dated: 5-17-77. DUFFY, J		

6-13-77	Trial cont'd.		
6-14-77	Trial cont'd.		
6-15-77	Trial cont'd.		
6-16-77	Trial cont'd. Alt. Juror #3 Excused from jury..Govt rests. Deft Ahon-Casquete's counsel moves orally to dismiss the indictment-Motion Granted..Deft discharged from the custody of the U.S. Marshal...		
6-17-77	Trial cont'd. Deft rest..trial adjd to 6-20-77...		
* 5-6-77	Gov't moves to Nolle this indictment orally. LEAVE TO ORALLY NOLLE PROSEQUI GRANTED. DUFFY, J		
6-20-77	TRIAL CONTINUED. - Summations.		
6-21-77	TRIAL CONTINUED. - Charge by the Court-Jury begins deliberations Jury retires for night.		

CONTINUED ON PAGE 4.

DATE	PROCEEDINGS (continued)	DUFFY, J	V. EXCLUDABLE DELAY			
			(a)	(b)	(c)	(d)
	(Document No.)					
6-22-77	TRIAL CONTINUED.	Jury resumes deliberation. Jury retures for night.				
6-23-77	TRIAL CONTINUED.	Jury resumes deliberations. Jury returns with a verdict of "GUILTY" as to each count and as to each of the defendants remaining on trial. Jury polled. Pre-sentence report ordered. Sentence date-Jul 21, 1977. Bail revoked as to deft MORENO. Deft MORENO Remanded. All other defts remanded. Jury discharged. DUFFY, J				
7-5-77	Filed CJA 21 COPY 2 approving payment to Ms. Maria Elena Cardenas. Interpreter, 49 East 96th St. New York, NY 10028. Dated: 6-22-77 DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Ms. Maria Elena Cardenas . Dated: 6-22-77. DUFFY, J (mailed copy 4 to AO)					
7-5-77	Filed CJA 21 COPY 2 approving payment to Manuel Ras, interpreter, 163-07 21st Avenue, Whitestone, New York 11357, Dated: 6-22-77 DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Manuel Ras interpreter, Dated: 6-14-77. DUFFY, J (mailed copy 4 to AO)					
7-5-77	Filed CJA 21 COPY 2 approving payment to Ms. Maria Elena Cardenas, interpreter, Dated: 6-28-77. DUFFY, J (mailed copy 1 to AO)					
7-5-77	Filed CJA 21 COPY 5 authorizing the expert service of Ms. Maria Elena Cardenas, interpreter. Dated: 6-25-77. DUFFY, J (mailed copy 4 to AO)					
7-11-77	Filed Deft's Memorandum of law in support of motion for judgment of acquittal or new trial.					
7-18-77	Filed transcript of record of proceedings dated: May 6, 1977.					
7-18-77	Filed transcript of record of proceedings dated: May 17, 23, 24, 25, 26, 27, 31, 1977 June 1, 2, 3, 1977.					
7-18-77	Filed transcript of record of proceedings dated: June 6, 7, 8, 9, 10, 13, 14, 1977.					
7-18-77	Filed transcript of record of proceedings dated: June 15, 16, 17, 20, 1977 June 21, 22, 23, 1977.					
7-21-77	Filed Memo endorsed on Memorandum of law etc. filed 7-11-77 -----Motion for acquittal or for a new trial is denied. So Ordered. DUFFY, J m-n - notified US Atty.					
7-22-77	Filed Contents Ordered Sealed and Placed in Vault in Clerk's Office. (PRE-SENTENCE MEMORANDUM) DUFFY, J					
7-22-77	Filed Govt's sentencing memorandum.					
CONTINUED ON PAGE 5.						

AO 256A

Interval
(per Section II)

Start Date
End Date

Ltr. Total
Code Days

DATE	PROCEEDINGS (continued)	V. EXCLUSAS (a) (b)
* 7-21-77	Filed Judgment (Atty. Norman Greene, present) Interpreter Maria Illena Cardenas present. The Defendant is committed for imprisonment for a period of SEVEN (7) YEARS on count 1. SEVEN (7) YEARS on count 2. Sentence on count 2 to run concurrently with sentence on count 1. Sentence on counts 1 & 2 to run concurrently with sentence imposed in District of Oregon on January 24, 1977 Case #CR. 76-234. Pursuant to the provisions of Title 21, United States Code, Section 841 the defendant is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of confinement. DUFFY, J Entered on - 7-26-77 Issued Commitment and Copies.	
7-25-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from Judgment filed 7-21-77. Copy mailed to atty. for deft. Norman Greene, Guggenhemer and Untermeyer, 80 Pine St. NYC and U.S. Attorney.	

A TRUE COPY
RAYMOND E. BURCHARD, CLERK
87 *[Signature]*
Deputy Clerk

0208 1 0860

ARROYO-ANGULO, WILSON
a/k/a 'Mata de Miel'

02 15

77 0102

04

JUVENILE

No. of Days
* 06

Docket No

Dkt

U.S. DISTRICT COURT

OFFENSES CHARGED

ORIGINAL COUNTS

21:846

Consp. to violate Federal Narcotics laws

1

21:812, 841(a)(1)

Distr. & possess. of Cocaine, II

2

& 841(b)(1)(a)

U.S. MAG
CASE NO.

BAIL - RELEASE

☐ Denied	AMT	☐ Fugitive
☐ Ser		☐ Pers. Recog
☐ S.		☐ PSA

000

Date

☐ 10% Deposit☐ Surety Bond☐ Collateral☐ 3rd☐ Pny Cust Other☐ Status Changed (See Docket)

SENTENCE

Disposition

6-23-77

7-21-77

☒ On All Charges☐ On Lesser * Offense(s)☐ Dismissed☐ WOP: ☐ WP☐ On Government's Motion

KEY DATES & INTERVALS

ARREST or

U.S. Custody Began

Summons Served

First Appearance

INDICTMENT

Information ☐

2-15-77

Indict. Waived ☐

Superseding

☒ Indict/Info ☐

2-28-77

In Charging District

2-28-77

5-4-77

ARRAIGNMENT

2-24-77

1st Plea

2-24-77

Final Plea

2-24-77

Final Plea

2-24-77

Final Plea

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Final Plea

2-24-77

ATTORNEYS

Constance Cushman

791-9099 215

John Curley

Moreno-01, Gomez-02, Rayo-03, Doe-05

DATE DOCUMENT NO. PROCEEDINGS

2-15-77

Filed Indictment.

B/W Ordered. Bail fixed at 1 million dollars. Indictment
Ordered sealed until further Order of the Court.... Tenney, J.
B/W Issued.

2-18-77

Indictment Ordered unsealed..... Tenney, J

2-22-77

Filed Govt's. affidavit for a writ of habeas corpus directed to
Warden, El Centro Immigration Detention Facility. Writ
Issued, ret. 2-24-77.

2-24-77

Deft. on writ. Through interpreter Graciella Lanus (sworn).
No counsel present. Court directs a plea of not guilty be
entered. Writ adjourned sine die. Case assigned to Duffy, J.
for all purposes..... Frankel, J.

2-28-77

Filed Superseding Indictment & referred to Duffy, J.
..... Frankel, J.

3-1-77

Filed Financial Affidavit and copy of order appointing counsel
(Federal Defender Services Unit) dated 2-24-77. FRANKEL, J.

DATE
77 CR 102

WILSON ARROYO

IV. PROCEEDINGS (continued)

PAGE TWO
DUFFY, J.

V. EXCLUDABLE DELAY

3-7-77

PTC Held. Deft's Atty. John Curley, Present -/AUSA Alan Levine. Case is adj. to 3-10-77 at 10:30AM in Room 506. (Deft. not present) WYATT, J

3-3-7-77 E-1

3-10-77

Deft (in custody) present, w/atty. John Curley of Legal Aid & AUSA Mr. Amorosa. Deft. Pleads Not Guilty & is referred to Judge Duffy. Bail of \$100,000 Cash or Surety is cont'd. Deft. CONT'D REMANDED. BRYAN, J.

3-16-77

ATTY. PRESENT, DEFT PRESENT-In Custody PRE-TRIAL CONFERENCE HELD & CONCLUDED. Interpreter Margarita Cartagena-Sworn DUFFY, J

3-3-16-77 E-1

4-29-77

PRE-TRIAL CONFERENCE HELD & ADJOURNED to 5-6-77. All DEFTS present W/Counsel. Interpreters NORMA SELTZER, HIMA YANG & GLADYS MATOS Present. DEFT ARROYO-ANGULO moves for a Bail Reduction-upon consideration-Bail will remain the same. DUFFY, J

3-3-29-77 E-1

5-4-77

Filed Superseding Indictment & referred to Duffy, J.Knapp, J.

5-6-77

All defts except JOHN DOE..Govt. moves to NOLLE this indictment orally..Leave to Orally file nolle prosequi...Granted..Duffy, J.

5-6-77

2nd superseding indictment. A plea of not guilty entered. Bail conditions on orig. & first superseding indictment are to cover this 2nd superseding indictment..Trial set for 5-17-77. Deft ~~remanded~~ remanded in lieu of bail.....Duffy, J.....

5-11-77

Filed affdvt. & notice of motion for an order dismissing the superseding indictments and for a severance...Ret. 5-17-77....

5-13-77

Filed transcript of record of proceedings, dated 3-16-77

5-17-77

WADE HEARING BEGUN & CONCLUDED. "DECISION RESERVED" DUFFY, J

5-17-77

Filed defts motion pur to R.12 & 14 and affdvt. of AUSA Cushman. Contents ordered sealed & placed in Clerks Vault..Duffy, J..

5-24-77

Wade hearing cont'd. from 5-17-77 and concluded (See minutes of today)

5-17-77

Counsel present, Interpreters present..Trial begun -Jury

5-18-77

Trial cont d Court declares a Mistrial. Jurors discharged

5-23-77

All counsel and Interpreters present & sworn..TRIAL BEGUN

5-24-77

with Jury Trial cont d. Opening statements by Govt and all defts except ARROYO who waives

5-25-77

Trial cont'd. Interpreters sworn..

5-24-77

Wade hearing cont'd. from 5-17-77 & concluded (See minutes of today)

FINE AND RESTITUTION PAYMENTS

DATE	RECEIPT NUMBER	CD NUMBER	DATE	RECEIPT NUMBER	CD NUMBER

- CONT'D ON PAGE 3 -
- A18 -

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

Page 3

U. S. vs

ARROYO-ANGULO, WILSON

77 0102

Yr. Docket No.

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE	
		(a)	(b)
	(Document No.)		
5-26-77	Trial cont d.		
5-27-77	Trial cont'd. Interpreter G. Lanas sworn. Trial adj to 5-31-77..		
5-31-77	Trial cont'd.		
6-1-77	Trial cont'd.		
06-2-77	TRIAL CONTINUED .		
06-3-77	TRIAL CONTINUED .		
06-06-77	TRIAL CONTINUED.		
06-07-77	TRIAL CONTINUED. - adj. to 6-9-77.		
06-09-77	TRIAL CONTINUED. interpreter Manuel Ras sworn.		
06-10-77	TRIAL CONTINUED.		
06-10-77	BEFORE DUFFY, J - Hearing Begun to confer immunity on two Gov't Witnesses - in presence of Jury. Hearing Concluded. (see minutes 6-10-77)		
*06-08-77	BEFORE DUFFY, J - Hearing Begun & Concluded. (MINUTES ORDERED SEALED)		
06-13-77	Trial cont'd.		
06-14-77	Trial cont'd.		
6-15-77	Trial cont'd.		
6-16-77	Trial cont'd. Alt. Juror #3 Excused from jury ..Govt rests. Deft Ahon-Casquete's counsel moves orally to dismiss the indictment - MOTION GRANTED...Deft discharged from the custody of the U.S. Marshal..		
6-17-77	Trial cont'd. Deft rest..Trial adjd to 6-20-77...		
* 5-6-77	Gov't moves to Nolle this indictment orally. LEAVE TO ORALLY NOLLE PROSEQUI GRANTED. DUFFY, J		
6-20-77	TRIAL CONTINUED. - Summations.		
6-21-77	TRIAL CONTINUED. - Charge by the Court -Jury begins deliberations Jury retires for night.		
6-22-77	TRIAL CONTINUED - Jury resumes deliberation. Jury retires for night.		
6-23-77	TRIAL CONTINUED. Jury resumes deliberations. Jury returns with a verdict of "GUILTY" as to each count and as to each of the defendants remaining on trial. Jury polled. Pre-sentence reports ordered. Sentence date-July 21, 1977. Bail revoked as to deft. MORENO. Deft MORENO Remanded. All other defts remanded. Jury discharged. DUFFY, J		

UNITED STATES DISTRICT COURT
CRIMINAL DOCKET

DUFFY, J

DATE	PROCEEDINGS (continued)	V. EXCLUDABLE DELAY			
		(a)	(b)	(c)	(d)
7-18-77	(Document No.) Filed transcript of record of proceedings dated: May 6, 1977.				
7-18-77	Filed transcript of record of proceedings dated: May 17, 23, 24, 25, 26, 27, 31, 1977 June 1, 2, 3, 1977.				
7-18-77	Filed transcript of record of proceedings dated: June 6, 7, 8, 9, 10, 13, 14, 1977.				
7-18-77	Filed transcript of record of proceedings dated: June 15, 16, 17, 20, 1977 June 21, 22, 23, 1977.				
7-22-77	Filed Govt's sentencing memorandum.				
* 7-21-77	Filed Judgment (Atty. John P. Curley, Federal Defender Services, present) Interpreter - Gladys Matos present - The defendant is committed for imprisonment for a period of FIFTEEN (15) YEARS on count 1. FIFTEEN (15) YEARS on count 2. Sentence on count 2 to run concurrently with sentence on count 1. Pursuant to the provisions of Title 21, United States Code, Section 841 the defendant is placed on Special Parole for a term of THREE (3) YEARS to commence upon expiration of confinement. DUFFY, J Entered on - 7-26-77. Issued Commitment and Copies.				
7-25-77	Filed NOTICE OF APPEAL of deft to USCA 2nd Circuit from Judgment filed 7-21-77. copy mailed to atty for deft. John P. Curley, 2 Lafayette St. NYC 10007 and U.S. Attorney.				

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

- v -

GUILLERMO MORENO, a/k/a
"Pimiento",
HUGO GOMEZ, a/k/a
"The Chemist,"
JAIME RAYO, a/k/a
"Rayito,"
WILSON ARROYO-ANGULO, a/k/a
"Mata de Miel,"
JOSE JERONCIO AHON-CASQUETE,
and JOHN DOE, a/k/a
"El Flaco," a/k/a
"The Seaman,"

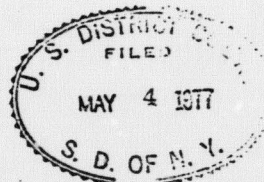
Defendants.

(S) 77CR 102

INDICTMENT

S 77 Cr. 102

S 77 Cr. 228



COUNT ONE

The Grand Jury charges:

1. From on or about the 20th day of December, 1975, up to and including the 19th day of February, 1976, GUILLERMO MORENO, a/k/a "Pimiento", HUGO GOMEZ, a/k/a "The Chemist," JAIME RAYO, a/k/a "Rayito," WILSON ARROYO-ANGULO, a/k/a "Mata de Miel," JOSE JERONCIO AHON-CASQUETE and JOHN DOE, a/k/a "El Flaco," a/k/a "The Seaman," the defendants, and others to the Grand Jury known and unknown, unlawfully, wilfully and knowingly, combined, conspired, confederated and agreed together and with each other, to violate the narcotic laws of the United States, specifically, Sections 812, 841(a)(1) and 841(b)(1)(A), 951, 952 and 960 of Title 21, United States Code.

THE OBJECTS OF THE CONSPIRACY

2. It was part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully and knowingly would import and bring into the United States large amounts of narcotic drugs, specifically cocaine, from and through Colombia, South America, in violation of Sections 951, 952 and 960 of Title 21, United States Code.

3. It was a further part of the conspiracy charged herein that the said defendants and co-conspirators unlawfully, wilfully, intentionally and knowingly, would distribute cocaine, a Schedule II narcotic drug controlled substance, in violation of Sections 812, 841(a)(1), and 841(b)(1)(A) of Title 21, United States Code.

THE MEANS USED BY THE DEFENDANTS AND
CO-CONSPIRATORS TO ACCOMPLISH THE
OBJECTS OF THE CONSPIRACY

4. Among the means whereby the defendants and co-conspirators would and did carry out the objects of said conspiracy, and insure the success of the unlawful venture to import, buy, sell and distribute narcotic drugs for profit, were the following:

(a) The defendant HUGO GOMEZ, a/k/a "The Chemist," was a Colombian national who served as foreign source of supply for the cocaine.

(b) The defendant JOHN DOE, a/k/a "El Flaco," a/k/a "The Seaman," a seaman aboard a Gran Columbiana Line vessel, transported cocaine into the United States secreted aboard that vessel.

(c) The defendant GUILLERMO MORENO, a/k/a "Pimiento," a Colombian national residing in the United States, acted as importer and wholesale middleman, purchasing and arranging for the delivery to shore of cocaine from on board the Gran Colombiana Line vessel by way of swimmers who approached the vessel as it lay docked in the Port of San Francisco.

(d) The defendants WILSON ARROYO-ANGULO, a/k/a "Mata de Miel," JAIME RAYO, a/k/a "Rayito," swam from shore to alongside the Gran Colombiana Line vessel as it lay docked in the Port of San Francisco, and there received cocaine which was lowered over the side of the vessel.

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(e) The defendant JOSE JERONCIO AHON-CASQUETE lent his automobile to the defendants JAIME RAYO, a/k/a "Rayito," WILSON ARROYO-ANGULO, a/k/a "Mata de Miel," and a co-conspirator for use in transporting the swimmers and cocaine.

(f) The defendant GUILLERMO MORENO, a/k/a "Pimiento" sold cocaine in kilogram quantities to individuals who, in turn, distributed these drugs in bulk to their respective customers in San Francisco, New York City and elsewhere.

OVERT ACTS

In pursuance of the said conspiracy and to effect the objects thereof, the following overt acts, among others, were committed in the Southern District of New York and elsewhere:

1. In and about late December, 1975, the defendant GUILLERMO MORENO, a/k/a "Pimiento," had a conversation at 841 Glenmore Avenue, Brooklyn, New York, concerning the cocaine business in New York City.
2. In and about early January, 1976, the defendant GUILLERMO MORENO, a/k/a "Pimiento," made a telephone call to a telephone located at 841 Glenmore Avenue, Brooklyn, New York.
3. In and about late January, 1976, the defendants GUILLERMO MORENO, a/k/a "Pimiento," WILSON ARROYO-ANGULO, a/k/a "Mata de Miel," JAIME RAYO, a/k/a "Rayito," and others met at a location in San Francisco and had a conversation about swimming to a ship in the Port of San Francisco to pick up a quantity of cocaine.
4. In and about early February, 1976, the defendants JOHN DOE, a/k/a "El Flaco," a/k/a "The Seaman," and GUILLERMO MORENO, a/k/a "Pimiento," met at a location on Mission Street, San Francisco, California, and had a conversation about the delivery of a quantity of cocaine from on board a ship in the Port of San Francisco.

Indictment

5. In and about early February, 1976, the defendant JOSE JERONCIO AHON-CASQUETE lent his automobile to the defendants WILSON ARROYO-ANGULO, a/k/a "Mata de Miel" and JAIME RAYO, a/k/a "Rayito" and a co-conspirator for use in transporting them to and from a pier in the Port of San Francisco.

6. In and about early February, 1976, the defendants WILSON ARROYO-ANGULO, a/k/a "Mata de Miel" and JAIME RAYO, a/k/a "Rayito," swam from the shore to the side of a ship docked in the Port of San Francisco and received approximately fifteen kilograms of cocaine which was lowered from the ship.

7. In and about early February, 1976, the defendants WILSON ARROYO-ANGULO, a/k/a "Mata de Miel," and JAIME RAYO, a/k/a "Rayito," delivered approximately fifteen kilograms of cocaine to the defendants GUILLERMO MORENO, a/k/a "Pimiento," and HUGO GOMEZ, a/k/a "The Chemist."

8. On and about February 19, 1976, an individual traveled to the West Side of Manhattan with approximately one kilogram of cocaine.

(Title 21, United States Code, Section 846.)

COUNT TWO

The Grand Jury further charges:

On and about February 19, 1976, in the Southern District of New York, GUILLERMO MORENO, a/k/a "Pimiento," HUGO GOMEZ, a/k/a "The Chemist," JAIME RAYO, a/k/a "Rayito," WILSON ARROYO-ANGULO, a/k/a "Mata de Miel," JOSE JERONCIO AHON-CASQUETE, and JOHN DOE, a/k/a "EL Flaco," a/k/a "The Seaman," the defendants unlawfully, intentionally and knowingly did distribute and possess with intent to distribute,

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Indictment

a Schedule II narcotic drug controlled substance, to wit,
approximately one kilogram of cocaine.

(Title 21, United States Code, Sections 812,
841(a)(1) and 841(b)(1)(a); Title 18,
United States Code, Section 2.)

Leo Argentine
FOREMAN

Robert B. Fiske, Jr.
ROBERT B. FISKE, JR.
United States Attorney

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Charge

2 United States of America

3 v.

S 77 Cr. 102

4 Guillermo Moreno, et al.

5 By Direction of the Court
6 Transcript furnished pursuant to
7 CJA not to be made available to
8 non-CJA counsel for any purpose,
during or after trial, and not
to be reproduced.

New York, New York
June 21, 1977
10:45 a.m.

9 (Trial resumed.)
10 - - -

11 (In open court; jury present.)

12 THE COURT: Ladies and gentlemen, now that
13 the evidence is over and the arguments are over the time
14 has come for you and for me to do our job in the ad-
15 ministration of justice.

16 Counsel for the government and counsel for
17 the defendants have been seeking over the past day to
18 guide us in our job of doing justice in this case. He
19 has presented his or her own interpretation of the testi-
20 mony. Now it is my province to instruct you as to the
21 law and you must accept my instructions on that.

22 It is your function to determine the facts and
23 your decision on the facts is final and conclusive.

24 In considering the evidence and determining the
25 facts in this case you must lay aside any question of

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Charge

sympathy. It is your duty as well as mine to administer justice fairly and impartially. In so doing we must be guided solely by the law and the evidence and neither you nor I can permit our conclusions to be affected by sympathy, suspicion, bias or prejudice.

You are to discharge your duty in an attitude of complete fairness and impartiality as I emphasized when you were chosen as jurors, without bias, without prejudice, for or against the government, for or against the defendants as parties to this case.

The case is important to the government since the enforcement of criminal laws is a matter of concern to the community. It is important to the defendants since each is charged with a serious crime.

Before I turn to the indictment which we are concerned here, there are a few general observations I would like to make.

I advised you at the very beginning of this case that your important function during the progress of the taking of testimony will be to listen carefully to each witness as he or she testified; to observe the witness and to watch his or her demeanor. It has been evidence to me and I think all counsel that you have followed that instruction, so now you are prepared to undertake your final

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Charge

duty and in the discharge of that duty, perform one of the highest duties and rights as a citizen.

Ladies and gentlemen, you are the sole and exclusive judges of the facts. You pass upon the weight of the evidence, you determine the credibility of the witnesses, you resolve such differences as there may be in the testimony and you, the members of the jury, draw whatever reasonable inferences you believe warranted by the facts as you determine them to be.

It is your recollection of the facts that governs. Should that recollection differ from that of the lawyers or from mine, please disregard what we have said in that way concerning those particular facts.

Don't disregard the argument, the inferences that the attorneys sought to draw, but if your recollection is different, then your recollection governs.

If you want to have any testimony read back to you, that will be done at your request. The forelady will receive some notepaper and envelopes and pencils and if you want something, just write me a note and I will see what we can do to get it to you.

Of course, you must consider only facts developed in this case. You are not to be influenced by anything outside of this trial, anything that you may have read about

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Charge
the criminal law or criminal cases, anything you saw on
television or any place else. It is only what you heard
here that counts.

At the times during the trial I have been called
upon to make rulings on matters of law. I have sustained
objections and I have overruled objections. Please
do not concern yourselves with my reasons for doing that,
they are purely legal matters.

From time to time we have had conferences either
here at the side bar or back in the robing room. Those
conferences concern purely matters of law and logistics
and they are of no concern of you.

You are not to draw any inference whatsoever
for or against either side because of the request for such
a conference.

If during the trial in my questions or in my
rulings you have believed that I indicated that I favor
one side or the other, please disregard it. Any questions of
mine, any rulings that I made, were purely for clarifi-
cation and were nothingelse.

You have heard the summations of counsel.
If you believe that counsel have stated something as to which
there is no evidence, you may disregard that part of what
he said. Statements of counsel, particularly in argument,

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Charge

2 are not evidence. They are the arguments of advocates,
3 not evidence.

4 Questions are not evidence. If an answer
5 came from a witness and was thereafter stricken by me,
6 and you recall from time to time I told you to take out your
7 little mental eraser and take that from your mind, whatever
8 that answer might be is not to be considered by you in
9 whatever deliberations and decisions you may make in this
10 case.

11 You have heard certain testimony which came from
12 a chemist, the lady chemist you may recall here with the
13 grayinghair by the name of Esther Allen. You also heard
14 testimony from a Mr. Gooch and a Miss Cottonreader.

15 I have directed you to disregard that testimony and
16 you are not to consider it in any way in reaching any verdict
17 in this case.

18 The evidence that you are to consider is contained
19 in the answers of the witnesses as you recall them and the
20 testimony that they gave and the exhibits which were
21 received in evidence. Similarly, you are to treat the
22 stipulations of the parties as real evidence for both sides
23 have agreed to what a fact may be and was merely a short
24 cut to bring the facts before you.

25 In this situation there is a question for you

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2 ladies and gentlemen to decide, whether the stipulation
3 was in fact a fact and, in doing so, you determine whether
4 it was believable and you use the same tests and standards
5 that you apply to any other testimony. You are to give it
6 whatever weight you determine that it should have.

7 You heard the testimony here. How do you
8 determine what weight to give the testimony? How do you
9 determine whether you can believe it or not?

10 Well, you heard me say to use your common sense.
11 Of course, as a jury you cannot hang your common sense in the
12 jury room and walk in here and act as good jurors. I am
13 sure that you have used your common sense.

14 You saw the witnesses. How did their
15 testimony impress you? Did they appear to be testifying
16 honestly and frankly? In evaluating their testimony
17 and their credibility, apply your own common sense and ex-
18 perience just the same way you would in determining an
19 important choice in your own life.

20 In determining whether you have been given a
21 true picture of a situation or not, you may not
22 consider everything about a witness' demeanor, and you
23 should. You should consider his or her lack of candor,
24 truthfulness and, of course, his or her ability to express
25 himself or herself.

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2 You should consider any possible bias on the
3 part of a witness, his or her strength of recollection
4 and the accuracy of that recollection.

5 Identification testimony was given. It is
6 an expression of belief or impression that a witness has.
7 Its value depends upon the opportunity of the witness to
8 observe the individual at the time in question and
9 to make a reliable identification later.

10 Whether a witness has an adequate opportunity
11 to observe any person will be affected by how long or
12 short a time there was available, how far or close the
13 witness was and how the lighting conditions were; whether
14 the witness had occasion to see and to know the person.

15 In general, a witness bases any identification on his
16 perception through the use of his own senses. Usually
17 a witness will identify a person by sense of sight, but he
18 does in fact use many other senses in doing it. It is
19 the total perception that counts.

20 The identification by a witness may have been
21 influenced by circumstances under which a defendant was
22 presented to him for identification. You should scrutinize
23 that identification with care. You should also consider
24 the length of time that elapsed between the alleged
25 occurrence whereby the witness got to know a person and the

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Charge

2 time that the witness was called upon to identify or to
3 even see a defendant. It is a factor bearing upon the
4 reliability of any identification. You may also, of
5 course, consider any time that a witness made an improper
6 identification.

7 If you believe that a witness has been convicted
8 of a crime or done any immoral or discreditable act, then
9 you may take that into account in determining the credibility
10 of the witness and you may give it such weight as you and
11 you alone determine.

12 You may also consider whether a witness has
13 a possible interest in the outcome of the case. That does
14 not mean a witness will necessarily testify falsely because
15 he or she has, whoever it might be, has an interest in the
16 case. It is merely a factor that you should consider in
17 determining believability. Let me give you an example.

18 There were law enforcement people who testified
19 here. Can it be said that they had an interest in the
20 case? Yes. They were the ones responsible for bringing
21 the case, they investigated it and they finally presented
22 it. Do they have an interest? They do have an interest.

23 But does their interest require you to reject
24 their testimony? No. It merely means that you should
25 recognize the interest and put it in the scales as part

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2 of the balancing act that you must do to determine where
3 the truth lies.

4 The fact that a witness is an employee of the
5 government does not mean that you should give whatever
6 testimony he gave any extra weight. As far as we are
7 concerned he is merely a witness and his testimony is to
8 be regarded the same as any other witness' testimony.
9 It is to be scrutinized by you the same as any other
10 witness.

11 Now, in this case the government is really one
12 party to the case. They are not to be considered in
13 any sense or in any different light than any other party to
14 the lawsuit.

15 In talking about the fact that the government
16 is merely another party to this case, you should also
17 recognize the part that counsel for both sides play.
18 Counsel for the government is to be considered in no
19 different light than counsel for any other party.
20 The fact that it is the government does not mean that you
21 should give it any lesser or more credit than you would
22 any other party.

23 One of the witnesses who testified here told you
24 that he was an accomplice in the crime charged against the
25 defendant at this trial. I tell you right now that his

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Charge

testimony must be weighed with caution and care.

Accomplice testimony implicating a defendant or a perpetrator of a crime is inherently suspect for such witness may have an important and personal stake in the outcome of the trial. An accomplice testifying may believe, although it might be a wrong belief, but he may believe that the defendant's acquittal might vitiate whatever expected reward he might be looking for down the road. In the prosecution of a crime, on the other hand, the government must often use the testimony of accomplices.

The fact that a witness is an accomplice is not in and of itself a mandate to you to reject his testimony. Weigh his testimony carefully and with caution. Accept or reject that which you feel is believable and that which you feel is unbelievable, reject it.

There has been testimony before you with respect to use by narcotic agents of the services of a confidential informant or informer. An informer such as Emilio Rivas here testified.

Whatever one thinks of an informer, the government uses them in order to get leads as to those who are violating the law. Whether you approve or disapprove of such a practice is not something which you should carry with you into the jury room.

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Charge

Such services by an informer or accomplice is not prohibited by law and you are not asked to determine the public policy which permits the use of such informers.

In weighing a witness' credibility -- credibility is one of those delightful lawyer's words that mean believability -- you believe him or you don't.

In weighing that, you should consider whether a particular witness' testimony is supported by other evidence which you find to be believable, or whether it is contradicted by other evidence which you believe is true.

If you find a witness has made a material misstatement or even lied here or lied at some other proceeding with the intention of misleading you or others, you may disregard that part of the witness' testimony, or you may disregard it all, or you may accept that part which you believe to be true, which you believe to be reliable, and disregard the rest.

For example, if you find that a witness has been feigning or pretending to be unable to speak English, to have an ignorance of the English language, you may consider that in the same manner that you would consider a false statement of a witness, in determining whether or not to believe the witness' testimony.

All of these things, all of them, are to be used

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2 by you in judging the credibility, the believability of
3 the witnesses and in figuring out where the truth lies.

4 In considering the evidence it is certainly not
5 the quantity of the evidence that is the determining factor
6 with you. It doesn't count at all. It is the quality
7 of the evidence that does count. It is not the number of
8 witnesses, it is not the number of exhibits, it is the
9 quality of the evidence that counts.

10 If it is particularly within the province or
11 power of a party to this case to produce a witness who
12 could give material information, material testimony on
13 an issue in this case, the failure to call such a witness
14 might be considered by you and might give rise to an
15 inference in your mind that the testimony would be
16 unfavorable to the party.

17 However, if the witness is equally available to both
18 sides, both the government and the defendants, you can
19 draw an inference that the testimony would have been
20 unfavorable to either party or to neither party or to
21 both. It might have been just useless.

22 If you find in drawing such an inference that
23 it was useless, you may draw no inference or conclusion
24 from that whatsoever. There is no conclusion to be drawn
25 by you with regard to an uncalled witness whose testimony

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2 would be merely cumulative, just adding to the testimony
3 that you have heard before.

4 You must also bear in mind, and this is so
5 important, that the law does not impose upon the defendant
6 in a criminal case the burden or duty of calling any witnesses,
7 producing any evidence, and that is most important.

8 I will get back to that in a few moments, but let
9 me complete my discussion as to witnesses. The general
10 rule is that witnesses are permitted to testify only as to
11 facts, those things which they have gained knowledge of
12 through their senses, and they are not permitted to express
13 their opinions.

14 The exception to this rule is when a witness
15 is qualified as an expert in some particular technical matter,
16 the expert may then testify as to his opinion on a subject
17 concerning which he has special knowledge, such as the
18 chemist who testified in this case.

19 You may reject an expert's opinion if the facts
20 as you find them are different from those which form the
21 basis for his opinion or after a careful consideration of all
22 the evidence in the case, you disagree with the opinion.
23 The opinion of an expert is subject to the same rules
24 concerning reliability, credibility and interest as the
25 testimony of any other witness.

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It is given to assist you in reaching a conclusion and is entitled to such weight as you find it warrants. You may consider the expert's qualifications and his experience and weigh his reasons for giving whatever opinion he gave. If you are unconvinced, you may reject his testimony entirely. Expert testimony is to be considered by you but it is not control your judgment.

You have heard testimony by various special agents that on various dates various defendants gave statements. If you find a particular defendant did not give such a statement, I charge you you may not consider that statement in the case. If you find that it is only part of the statement, then you can consider only part of a statement. What you must do even if the statement was given, is to determine whether the statement was a voluntary one. If it was not voluntary, then you must reject it and give it no weight whatsoever.

So you have a two-pronged test here, one, was the statement given and, two, was it voluntary.

During my charge you will be hearing me refer to direct and circumstantial evidence. It may be well to start off explaining what the difference between direct and circumstantial evidence is.

Direct evidence is testimony which a witness gives

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2 as to what he actually saw or heard or felt, something
3 that he gained knowledge of through his senses directly.

4 Circumstantial evidence is evidence of facts
5 and circumstances from which one may infer other facts
6 because you can imply it from the reasonable experience of
7 mankind. Circumstantial evidence is evidence which
8 tends to prove a disputed fact is true or tends to prove
9 other facts which have a logical tendency to lead the mind to
10 the belief that the other facts are true.

11 Circumstantial evidence, if you believe it,
12 is to be given the same weight as direct evidence. Let
13 me give you an example of circumstantial evidence.

14 Let's say that this morning I painted over all
15 the windows here with a black paint, you couldn't see out.
16 When you came in it was a beautiful day, a day of joy,
17 the sun was shining beautifully in the sky.

18 During the time when I am charging you you see
19 someone walking in with a sopping wet raincoat. You
20 can't see outside and all the windows are blackened over.

21 After that you see someone come in with an
22 umbrella and that leaves a trickle of water as the person
23 walks across the courtroom to his or her seat.

24 On the basis of that you could conclude that
25 it is raining out. That is all there is to circumstantial

1 arbr 16

2 evidence. You use certain facts that you know to be true
3 and conclude from those circumstances other facts which
4 reasonably flow one from the other. That is all there
5 is to circumstantial evidence. It is to be given the
6 same weight as you would give to direct evidence.

7 Before we turn to the indictment, let me clear
8 up some other preliminary matters. The indictment is in
9 two parts, two separate counts or charges.

10 The first count is called the conspiracy
11 count and charges all the defendants along with certain
12 others known and unknown to the grand jury with having
13 conspired to violate the federal narcotics laws which
14 prohibit the unlawful importation of cocaine and which
15 prohibits the distribution of cocaine or the possession
16 of cocaine with intent to distribute it.

17 The other count which I will hereafter refer to
18 is the substantive count and charges the defendants with
19 the actual violation of those laws.

20 One of the defendants who is named in the indict-
21 ment and went to trial before you has been severed. That
22 just means that I decided as a matter of law to sever him
23 from this case. Please, don't speculate as to what the
24 reason might have been for me to do that. You will have
25 enough to do to find the facts in the case as submitted to

1 arbr 17

2 you. Don't engage in useless speculation.

3 Certain persons who the government alleges were
4 also engaged in criminal activity were not accused in this
5 case as defendants. For example, Rivas was not accused
6 as a defendant in this case but they were called and they
7 fall into a group which are called co-conspirators.

8 The fact that a person is referred to as a
9 co-conspirator does not affect necessarily his credibility
10 in this case. No inference should be drawn by you because
11 persons are included or excluded from the indictment.

12 I have told you before -- Mr. Clerk, will you
13 swear a marshal.

14 (Marshal sworn.)

15 THE COURT: Ladies and gentlemen, you heard
16 the oath to the marshal. I don't want you to talk
17 about this case while we take a break. You, young lady,
18 see if you can have some water and hopefully feel better,
19 all right?

20 Marshal, will you be good enough to escort
21 them to the jury room?

22 THE FORELADY: The jurors have asked would
23 it be possible for you to talk without the microphone?
24 We can hear better when you talk without it.

25 THE COURT: Sure.

arbr 18

(The jurors left the courtroom.)

THE COURT: Is there any objection? I don't like to break up a charge any more than anybody else does.

MR.LEITEL: No, your Honor.

THE COURT: The woman obviously sounded like she was going to cough up her lungs right through her esophagus.

MS. CUSHMAN: My only question is how seriously incapacitated she is. Will you ask her if she feels well enough to take part in the deliberations?

THE COURT: I don't know, but I will ask her exactly that at the end of the charge.

MR.LEITEL: She has been here four weeks and if she is not feeling well --

THE COURT: I am well aware of it and I don't feel too good myself. Take ten minutes.

(Recess.)

(Jury present.)

THE COURT: How do you feel now, all right?

JUROR NO. 6: Yes.

THE COURT: Do you think you can go into deliberations?

JUROR NO. 6: I think I can.

THE COURT: I was just about to remind you that

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Charge

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2 guilt is personal and the guilt or innocence of any
3 defendant on trial must be determined with respect to him
4 alone, solely on the evidence against him or the lack of
5 evidence.

6 The charges against him stand or fall on the
7 proof or lack of proof against him, and not on the proof
8 against any other defendant or any co-conspirator.

9 There are certain principles of law which apply
10 generally to every criminal case that I mentioned at the
11 beginning of the trial. Let me repeat them to you now.

12 An indictment is merely a piece of paper, an
13 accusation. It is a charge, is not evidence or proof
14 against any defendant. No weight whatsoever is to be given
15 by you to the fact that a defendant has been named in an
16 indictment.

17 At some point it may have appeared to you that
18 some of the defendants were in custody. The reason for this
19 is simply that they are unable to meet the bail that was set.
20 You are to draw absolutely no conclusions, no inferences
21 at all from that fact.

22 Each defendant has pleaded not guilty. The
23 government has the burden of proof and it is a burden of
24 proof beyond a reasonable doubt of each of the charges
25 alleged in the indictment. A defendant does not have to

1 arbr 20

2 prove his innocence.

3 On the contrary, he is presumed to be innocent
4 of the accusations contained in the indictment. The
5 presumption of innocence was in his favor at the beginning
6 of this trial and remains in his favor right now and it
7 remains in his favor until you, after deliberation, find
8 that the government has met its burden of proof beyond
9 a reasonable doubt.

10 The defendant, although accused at the beginning
11 of the case, begins the trial with a clean slate. There
12 is no evidence against him. The government, having
13 made the charge, must prove it beyond a reasonable doubt.
14 The burden of proof never shifts. It remains with the
15 government throughout the trial.

16 In a criminal case a defendant is not called upon
17 to prove his innocence. The burden is upon the govern-
18 ment to prove the accused guilty beyond a reasonable doubt
19 of every essential element of the crime charged.

20 The defendant has a right to rely upon the
21 failure of the prosecution to establish that proof. The
22 defendant may also rely upon evidence brought out on cross
23 examination of government witnesses.

24 The law does not impose upon a defendant the duty
25 of producing any witness. Some defendants have produced

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1 arbr 21

2 witnesses, some have not. One way or the other, you
3 are to draw no inference from that.

4 I remind you that a defendant has a right to
5 rely upon the presumption of innocence and need do nothing
6 more. The presumption of innocence which I have referred
7 is removed only if and when you are satisfied that the
8 government has sustained its burden of proving a defendant
9 guilty beyond a reasonable doubt.

10 I have used the term a number of times. What
11 is a reasonable doubt? It almost defines itself.

12 It is a doubt founded in reason, arising out
13 of the evidence in the case or the lack of evidence.
14 It is a doubt which a reasonable person would have after
15 carefully weighing all the evidence.

16 A reasonable doubt is a doubt which appeals
17 to your reason, to your judgment, to your common sense, to
18 your own experience.

19 It is not caprice, it is not whim, it is not
20 speculation and it is not a chance to avoid doing what
21 you might consider to be an unpleasant duty. It is
22 definitely not sympathy.

23 If after a careful and impartial consideration
24 of all the evidence you can candidly and honestly say that
25 you are not satisfied of the guilt of a defendant, that

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2 you do not have an abiding conviction which amounts to
3 a moral certainty, if you have such a doubt, that would
4 affect a prudent person to hesitate before doing something
5 in a matter of importance, then you have a reasonable doubt
6 and, if you have such a reasonable doubt, then it is your
7 duty to acquit the defendant.

8 On the other hand, if after an impartial and
9 fair consideration of all the evidence you can candidly
10 and honestly say that you do have an abiding conviction
11 of the defendant's guilt, such a conviction as would lead
12 you to act in the most important matters in your life,
13 then you have no reasonable doubt and it is your duty to
14 convict.

15 One more word. Proof beyond a reasonable doubt
16 is not proof to a positive certainty or beyond all possible
17 doubt. If that were the rule it would practically be impossible
18 to prove any fact, any controverted fact in a court of
19 law; any fact which is not susceptible to mathematical
20 certainty.

21 But we are not dealing with mathematics here.
22 The law in a criminal case is that it is sufficient for
23 the government to prove the guilt of a defendant beyond
24 a reasonable doubt, not beyond all possible doubt.

25 Now, in our federal system there are no crimes

Charge

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2 except those which are defined by statute, that is by
3 laws written by the Congress.

4 In this case the charge, the accusation is
5 made against these defendants and are made under certain
6 federal laws passed by Congress. I don't believe it is
7 necessary for you to know the exact wording of any of
8 these laws.

9 Nonetheless, it is important for you to know
10 as background for your understanding, a basic description
11 of the laws involved in this case.

12 The first count charges a conspiracy, charges
13 that Guillermo Moreno, with the nickname of Pimiento, Hugo
14 Gomez, Jaime Rayo, with a nickname Rayito, Wilson Arroyo-
15 Angulo, called Mata de Miel and Jose Jeroncio Ahon-Casquette,
16 and others known and unknown to the grand jury, conspired to
17 violate the narcotic laws. I am going to refer to this
18 count as the conspiracy count.

19 Count 2 is the substantive count and that count,
20 unlike the conspiracy charge, is based upon the actual
21 commission, the carrying out of the offense alleged therein.

22 It charges a violation of the federal narcotic
23 laws in which each defendant is accused of possession
24 with intent to distribute approximately one kilogram of
25 cocaine.

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2 Let me go into each count separately.

3 A conspiracy to commit a crime is an entirely
4 separate and different offense from the substantive crime
5 which might be the object of the conspiracy.

6 The essence of the crime of conspiracy is that
7 of an agreement or understanding to violate other laws.
8 Thus, if a conspiracy exists, even if it should fail of
9 its purpose, it is still punishable as a crime.

10 Consequently, in a conspiracy charge there is
11 no need to prove an actual violation of the narcotics
12 laws. Congress has made a conspiracy or a concerted
13 action to violate a federal law a crime entirely separate
14 and distinct and different from the violation of the law
15 which may be the object of the conspiracy.

16 The conspiracy count here charges that from
17 on or about the 20th day of December 1975, up to and
18 including the 19th day of February, 1976, Guillermo Moreno
19 with the nickname Pimiento, Hugo Gomez, Jaime Rayo, nickname
20 Rayito, Wilson Arroyo-Angulo, with the nickname Mata de Miel
21 and Jose Jeroncio Ahon-Casquete and John Doe with the nick-
22 name El Flaco and The Seaman, the defendants, and others
23 known to the grand jury and unknown, unlawfully, wilfully
24 and knowingly combined, conspired, confederated and agreed
25 together and with each other to violate the narcotic laws

1 arbr 25

Charge

2 of the United States, specifically certain sections of
3 Title 21.

4 The object of the conspiracy is set out in the
5 indictment and are these: It was part of the conspiracy
6 charged herein that the said defendants and co-conspirators
7 unlawfully, wilfully and knowingly would import and bring
8 into the United States large amounts of narcotic drugs,
9 specifically cocaine, from and through Colombia, South
10 America, in violation of certain sections of the law.

11 3. It was further a part of the conspiracy
12 charged herein that the defendants and co-conspirators
13 unlawfully, wilfully, intentionally and knowingly, would
14 distribute cocaine, which is a Schedule II narcotic
15 drug, a controlled substance under the law in violation
16 of certain other sections of Title 21.

17 Then the indictment goes on and alleged certain
18 means. One of the means whereby the defendants and
19 co-conspirators would and did carry out the objects of said
20 conspiracy, and insure the success of the unlawful venture
21 to import, buy, sell and distribute narcotic drugs for
22 profit, were the following:

23 (a) The defendant Hugo Gomez was a
24 Colombian national who served as foreign source of
25 supply for the cocaine.

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2 (b) The defendant John Doe with the nickname
3 El Flaco and The Seaman, a seaman aboard a Gran Columbiana
4 Line vessel, transported cocaine into the United States
5 secreted aboard that vessel.

6 (c) The defendant Guillermo Moreno, nickname
7 Pimiento, a Colombian national residing in the United
8 States, acted as importer and wholesale middleman,
9 purchasing and arranging for the delivery to shore of
10 cocaine from on board the Gran Colombiana Line vessel by
11 way of swimmers who approached the vessel as it lay docked
12 in the Port of San Francisco.

13 (d) The defendants Wilson Arroyo-Angulo,
14 nickname Mata de Miel, Jaime Rayo, nickname Rayito,
15 swam from shore to alongside the Gran Colombiana Line
16 vessel as it lay docked in the Port of San Francisco,
17 and there received cocaine which was lowered over the side
18 of the vessel.

19 (e) The defendant Jose Jeroncio Ahon-Casquete
20 lent his automobile to the defendants Jaime Rayo, nickname
21 Rayito, Wilson Arroyo-Angulo, nickname Mata de Miel, and a
22 co-conspirator for use in transporting the swimmers and
23 cocaine.

24 (f) The defendant Gyillermo Morena, nickname
25 Pimiento, sold cocaine in kilogram quantities to individuals

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2 who, in turn, distributed these drugs to their respective
3 customers in San Francisco, New York City and elsewhere.

4 In order to convict the defendants on trial
5 the government must prove beyond a reasonable doubt the
6 following essential elements:

7 1, the existence of the conspiracy charged in
8 the indictment;

9 2, that a defendant knowingly and wilfully
10 joined himself with the conspiracy with the intent to
11 further its purpose.

12 3, that one of the conspirators knowing committed
13 at least one overt act at or about the time alleged, and
14 that that overt act occurred in the Southern District of
15 New York.

16 I will refer to the overt acts a little later but
17 let me take up what the Southern District of New York
18 is.

19 I already told you the Southern District of
20 New York stretches from Governor's Island up to the
21 Albany County line. It does not include anything more.
22 It does not include Brooklyn, it does not include Queens,
23 it does not include Staten Island and it certainly does not
24 include San Francisco.

25 If the government fails to establish each and every

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2 element beyond a reasonable doubt, then you must acquit
3 the defendant on this count.

4 If the government succeeds in proving each and
5 every essential element beyond a reasonable doubt, then it
6 is your duty to convict.

7 Let's consider what a conspiracy is. A conspiracy
8 in idea is simple. It is a combination or agreement or
9 understanding of two or more people by concerted action
10 to accomplish a criminal or unlawful purpose.

11 in this instance the allegation of conspiracy al-
12 leges that the unlawful purpose was the importation and
13 distribution of cocaine. But the gist of the crime
14 is the unlawful combination or agreement to violate the
15 law. The success or failure of the conspiracy is
16 immaterial on this question.

17 In this case the government contends at least
18 in part the conspiracy succeeded. However, as I said,
19 the success or failure of the conspiracy is immaterial
20 on the question of guilt or innocence.

21 To establish a conspiracy the government need
22 not prove or show that two or more persons sat down around
23 a table and entered into some kind of solemn pact orally
24 or in writing, stating they were going to form a con-
25 spiracy, and the details of what the object of the

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2 conspiracy was going to be and how they were going to do it.

3 Common sense will tell you that when people under-
4 take to enter into an unlawful conspiracy, much is left to
5 unexpressed understanding. But the evidence must show
6 in order to establish a conspiracy that its members in some
7 way and in some manner, through any contrivance impliedly
8 or tacitly came to a common understanding to violate the law
9 and to accomplish an unlawful plan

10 In determining whether there has been such an
11 unlawful agreement, you may judge the acts and conduct
12 of the alleged co-conspirators that are done to carry out
13 the apparently criminal purpose. Do you remember that
14 old adage, action speak louder than words? It is
15 applicable here.

16 The acts which you may find maybe disconnected
17 but you are to consider all of the acts in determining
18 whether taken as a whole they will permit you to draw an
19 inference that a conspiracy did in fact exist.

20 Items of evidence are not to be viewed in
21 isolation but in conjunction with one another and it is
22 upon the totality of the evidence you must make your
23 determinations.

24 A conspiracy has sometimes been called a
25 partnership in crime. Under partnership law, the acts and

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2 statements of a partner become the acts or statements of
3 all partners and the same is true in a conspiracy.

4 To become a member of a conspiracy a defendant
5 need not know each and every one of the other members;
6 nor need he know the exact participation of the other
7 members of the conspiracy.

8 Each member of the conspiracy may perform
9 separate and distinct acts at different times and different
10 places. Some conspirators may play major roles and some
11 minor roles.

12 But the guilt of a conspirator is not
13 governed on the extent, duration of his activity or
14 whether he played a greater or lesser role in the con-
15 spiracy.

16 Even if someone joined a conspiracy after it
17 had been formed and engaged in it to a degree more limited
18 than that of the other co-conspirators, he is equally
19 culpable as a conspirator.

20 In other words, it is not required that a person
21 be a member of the conspiracy from the start.

22 He may join at any point during the progress
23 and be held responsible for all of the acts of the co-
24 conspirator before he joined and all that will be done
25 thereafter to carry out the conspiracy during its

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Charge

2 existence while he is a member.

3 A conspiracy once formed is presumed to
4 continue until its objective are accomplished or there
5 is an affirmative act of termination by a member thereof,
6 or it is otherwise terminated.

7 So too a person found to be a member of the
8 conspiracy is presumed to remain as a member of the
9 conspiracy unless there is some proof that he withdrew
10 from the conspiracy.

11 As to the first element, that is the existence
12 of the conspiracy charged in this indictment, you are to
13 consider the evidence that has been admitted with respect
14 to the conduct, acts and declarations of each alleged
15 co-conspirator and such inference as you believe can be
16 reasonably drawn therefrom.

17 It is sufficient to establish the existence of
18 a conspiracy from the proof of all the relevant evidence,
19 facts and circumstances, you find beyond a reasonable doubt
20 that the minds of at least two of the alleged co-conspirators
21 met in an understanding way to accomplish by the means alleged
22 one or more of the objectives of the conspiracy as charged
23 in the indictment.

24 If you conclude that the conspiracy did
25 exist, then you must consider the second element, whether

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2 each defendant was a member of the conspiracy.

3 I told you before guilt is personal. You
4 must consider each defendant individually. His participation
5 in the conspiracy, if one did exist, must be established
6 by the independent evidence of each defendant's own acts,
7 his own statements, his own conduct, and with the reason-
8 able inferences then to be drawn therefrom.

9 Even if you find beyond a reasonable doubt
10 that a particular defendant was involved in the delivery
11 or drugs or made a sale and purchase of drugs but did
12 not share in the common scheme or purpose of the conspiracy
13 charged, or acts in furtherance of that conspiracy as
14 charged in Count 1, then you must find the defendant not
15 guilty with respect to the conspiracy count.

16 If you find a particular defendant was a member
17 of the conspiracy, you must be satisfied beyond a reasonable
18 doubt that, aware of its purpose, a particular defendant
19 was a willing participant with an intent to advance the
20 purpose of the conspiracy.

21 If you find that, then no matter how limited the
22 participation may be, he is responsible for everything that
23 took place in the conspiracy.

24 Once you are satisfied beyond a reasonable doubt
25 that a conspiracy existed, and that a defendant was a

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2 member of that conspiracy, then the acts and declarations
3 of all the other members of the conspiracy made during its
4 existence and done in furtherance of the conspiracy and
5 its objectives, are considered the acts and declarations
6 of the defendant whom you have already found to be a member
7 of the conspiracy even though they may not have been
8 present.

9 I told you about taking evidence subject to
10 connection. That is what I was talking about. Let me
11 repeat it again.

12 Once you are satisfied beyond a reasonable
13 doubt that a conspiracy existed and a particular defendant
14 was a member, then the acts and declarations of any other
15 person whom you also find to be a member of the conspiracy,
16 made by such person during the existence of the conspiracy
17 and in furtherance of the objects of the conspiracy, are
18 considered the acts and declarations of each member of the
19 conspiracy even though they were not present at the time.

20 In fact, to reduce it to its simplest terms,
21 if there was a partnership, each partner acts and speaks
22 for every other member of the partnership even though the
23 other partners are not present. That is all taking it
24 subject to connection means. It is most important that
25 you recognize the charge here is that the conspiracy existed

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2 for a particular length of time, and we are only talking
3 about acts and declarations of the conspirators, if you
4 find there is a conspiracy during that particular length of
5 time.

6 I mentioned the words that the acts and
7 declarations had to be in furtherance of the conspiracy.
8 All that means it has to be intended to achieve the objects
9 of the conspiracy. It does not apply to any other acts
10 or declarations.

11 Before I explained to you the difference between
12 direct and circumstantial evidence. The existence and
13 membership in a conspiracy may be found by you either from
14 direct or circumstantial evidence. Either direct or
15 circumstantial evidence will suffice if you are convinced
16 by that evidence beyond a reasonable doubt of the existence
17 of a conspiracy and the guilt of the defendant who is
18 charged.

19 In this case the government relies upon direct
20 and circumstantial evidence. It contends that through
21 the testimony of the accomplice or the co-conspirator it
22 has direct evidence and it contends further that, in
23 addition, there is circumstantial evidence which has been
24 offered as to the conspiracy.

25 It is on the basis of all of the evidence you

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2 are to make your decision.

3 If you are led to two conclusions, one favoring
4 guilt and one favoring innocence, it is your duty to reject
5 the one favoring guilt and to favor the one favoring inno-
6 cence. The reason for that is simple.

7 If you come up and say that the evidence leads
8 me to two conclusions, one guilty and the other one innocent,
9 then at that point you have a reasonable doubt in your
10 mind and, once again, I must remind you it is up to the
11 government to prove its case beyond a reasonable doubt.

12 Needless to say, whether a defendant knowingly
13 and intentionally participated in the charged conspiracy
14 is a question of fact. It concerns what goes on in a per-
15 son's mind and science has yet to invent a device whereby
16 we can go back in time and peer into a man's mind to see
17 what he is thinking.

18 You must determine what the intent was from
19 the person's acts, conduct and the surrounding circum-
20 stances, and such inferences which you feel can be fairly
21 drawn therefrom.

22 Knowledge may be inferred from the circumstances
23 that will convince a man of ordinary intelligence that
24 this is a fact. If you find that a defendant acted with
25 an intentional disregard, with a conscious purpose of

Charge

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2 avoiding learning the truth, unless he believed there were
3 narcotics present, then the knowingly part of the charge
4 is not proved beyond a reasonable doubt.

5 The evidence to be considered by you on the
6 question of knowledge should not be considered by you
7 as a substitute for another purpose. It is to be considered
8 by you with all the evidence in the case before you reach
9 your judgment.

10 Let me give a word of caution. Mere association
11 by one person with a co-conspirator or a conspirator is not
12 proof that a person joined the conspiracy. Even if we
13 find or if you find, since you are the finders of the
14 fact, that there is an association with knowledge that
15 there is a conspiracy, that is insufficient for you to
16 return a verdict of guilty. You must find that the
17 person actually participated, knowingly and intentionally,
18 to join the conspiracy.

19 He doesn't have to file an application but he
20 must do something to join the venture to try to effect
21 the objects of the conspiracy. In the vernacular, he
22 got to be in on the scheme.

23 So even if you find a particular defendant
24 associated with other defendants and you further find that
25 the latter defendants were participants in a conspiracy to

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2 violate the narcotics laws, this by itself would be
3 insufficient to find the particular defendant guilty
4 of the charges.

5 In this case the government has introduced
6 certain evidence as to acts which they claim took place
7 before the start of the alleged conspiracy, and let me
8 remind you the allegations started on December 20, 1975;
9 and also after the ending date, which is alleged to be
10 February 19, 1976.

11 I told you before that you could consider these
12 acts only for a very limited purpose. Let me explain to
13 you once again what that limited purpose is.

14 The fact that a defendant may have committed
15 an act before or after the conspiracy charged in the
16 indictment, is not evidence or proof that the accused
17 committed the offense charged in this indictment. Evidence
18 as to an alleged earlier or later act of a like nature
19 may not be considered by you in determining whether the
20 defendant did the acts charged in this indictment.

21 However, if you find that other evidence in the
22 case standing alone establishes beyond a reasonable doubt
23 that the defendant did the acts charged in the indictment,
24 then you may consider the evidence of earlier and later acts
25 to determine whether he did it knowingly and wilfully.

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2 You may not use that evidence for any other
3 purpose.

4 Let me repeat that. If there is other
5 evidence in the case outside the dates of the alleged
6 conspiracy that one of the accused did a certain act which
7 the government contends is a similar act, whether it be
8 earlier or later, you may only use that evidence to determine
9 whether the defendant did the act, if you find that he did
10 the act during the period of the conspiracy, whether he
11 did that knowingly and wilfully, that is all.

12 I say knowingly and wilfully, of course,
13 excluding any mistake, accident or innocent reason. I want
14 you to understand that too.

15 These acts I told you about were admitted into
16 evidence only against a particular defendant or defendants
17 who were alleged to have participated in the act. That
18 may not be considered by you for any purpose whatsoever
19 against any other defendant.

20 I told you a couple of minutes ago that acts
21 or statements by one conspirator could be used against
22 another co-conspirator. That applies only during the time
23 of the conspiracy, when it is allegedly in furtherance of
24 the objects of the conspiracy.

25 But acts or statements occurring outside the

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2 time of the conspiracy cannot be considered against any
3 other defendant unless he personally was engaged in that
4 act and made that statement.

5 In deciding what weight you are to give to any
6 evidence, events allegedly occurring outside the date
7 of the conspiracy, if you find them too remote in time,
8 then you may disregard the entire thing. If you don't
9 believe it happened, of course, you must disregard it
10 entirely.

11 If you do determine it has probative value,
12 you may consider it in connection with all the evidence
13 only as to the one or two or how many defendants are
14 accused here who were engaged in those similar acts.

15 I think I have made it clear to you, at least
16 I hope I have, that proof of subsequent acts or statements
17 is not and should not substitute for proof of the crime
18 charged by this indictment.

19 In order to find a defendant guilty, you must
20 find that the defendnat participated in the conspiracy
21 with knowledge of at least some of its purposes and with
22 the intent to aid in the accomplishment of those unlawful
23 acts.

24 Now, we turn to the third element. Do you
25 remember I told you there were three elements in a con-

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2 spiracy? We are now up to the third element.

3 I mentioned to you the third element is that
4 the overt act had occurred in furtherance or in an attempt
5 at furtherance of the object of the conspiracy, within
6 the Southern District of New York.

7 An overt act is any step, action or conduct
8 which is taken to achieve, accomplish or further the
9 object of the conspiracy.

10 The purpose of requiring proof of an overt
11 act is simple. While parties may sit down and agree to
12 a conspiracy to violate certain laws, they can get up
13 from the table and change their minds completely.

14 So a conspiracy requires that something be
15 done in an attempt at furtherance of the conspiracy.
16 That something is called an overt act and, to bring it
17 within this case, you must find the overt act occurred in
18 the Southern District of New York.

19 The overt act need not be a criminal offense in
20 and of itself. It might be something quite simple but, yet,
21 it must be done in an attempt to further the objects of the
22 conspiracy.

23 Here we have a number of overt acts charged.
24 In pursuance of the said conspiracy and to effect the
25 objects thereof, the following overt acts, among others,

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2 were committed in the Southern District of New York and
3 elsewhere:

4 1. In and about late December, 1975, the
5 defendant Guillermo Moreno, nickname Pimiento, had a
6 conversation at 841 Glenmore Avenue, Brooklyn, New York,
7 concerning the cocaine business in New York City.

8 2. In and about early January, 1976, the
9 defendant Guillermo Moreno, nickname Pimiento, made a
10 telephone to a telephone located at 841 Glenmore Avenue,
11 Brooklyn, New York.

12 3. In and about late January, 1976, the
13 defendants Guillermo Moreno, nickname Pimiento, Wilson
14 Arroyo-Angulo, nickname Mata de Miel, Jamie Rayo, nickname
15 Rayito, and others met at a location in San Francisco
16 and had a conversation about swimming to a ship in the
17 Port of San Francisco to pick up a quantity of cocaine.

18 4. In and about early February, 1976, the
19 defendants John Doe, nickname El Flaco, and The Seaman,
20 and Guillermo Moreno, nickname Pimiento, met at a location
21 on Mission Street, San Francisco, California, and had a
22 conversation about the delivery of a quantity of cocaine
23 from on board a ship in the Port of San Francisco.

24 5. In and about early February, 1976, the
25 defendant Jose Jeroncio Ahon-Casquete lent his automobile

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2 to the defendants Wilson Arroyo-Angulo, nickname Mata de
3 Miel and Jaime Rayo, nickname Rayito, and a co-conspirator
4 for use in transporting them to and from a pier in the
5 Port of San Francisco.

6 6. In and about early February, 1976, the
7 defendants Wilson Arroyo-Angulo, nickname Mata de Miel
8 and Jaime Rayo, nickname Rayito, swam from the shore to the
9 side of a ship docked in the Port of San Francisco and
10 received approximately fifteen kilograms of cocaine which was
11 lowered from the ship.

12 7. In and about early February, 1976, the
13 defendants Wilson Arroyo-Angulo, nickname Mata de Miel,
14 and Jaime Rayo, nickname Rayito, delivered approximately
15 fifteen kilograms of cocaine to the defendants Guillermo
16 Moreno, nickname Pimiento, and Hugo Gomez.

17 8. On and about February 19, 1976, an
18 individual traveled to the West Side of Manhattan with
19 approximately one kilogram of cocaine.

20 You see that the particular overt act may by
21 itself charge innocent conduct, but if it was for the
22 purpose of furthering the conspiracy, in that event it
23 sheds its innocent appearance and becomes an overt act
24 by an alleged co-conspirator in furtherance of the object
25 of the conspiracy.

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2 It is not necessary for the government to prove
3 that each of the accused actually did each and every overt
4 act since the act of anyone in furtherance of the con-
5 spiracy is the act of all of them.

6 In fact, the requirement is that the government
7 need prove only one of the overt acts alleged, but that one
8 must have occurred in the Southern District of New York
9 and I explained to you before what the Southern District of
10 New York contains.

11 This overt act does not have to have occurred
12 at the precise time and location or place alleged. So
13 too the indictment charges that the conspiracy started on
14 a particular date and lasted until a particular date.
15 It is enough that it be right around those dates.

16 The specific date is not required to be proved
17 by the government but I will tell you once again that
18 anything that occurred prior to this particular specific
19 date or after the specific date alleged in the indictment
20 when the conspiracy ended can only be considered against
21 the defendant against whom it was offered and nobody else.

22 Before I leave the area of conspiracy, let me
23 mention another thing which you should know about. Proof
24 of several conspiracies is not proof of the single overall
25 conspiracy charged in the indictment, unless one of the

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2 several conspiracies which is proved is the single
3 conspiracy charged in the indictment.

4 Let me repeat that, all right? Proof of
5 several separate, different conspiracies does not prove
6 the single overall conspiracy charged in the indictment,
7 unless one of the conspiracies that was proved is the
8 one charged in the indictment.

9 If you find that there were several conspiracies
10 proved, you are going to determine whether the conspiracy
11 charged was in fact proved. Then you are going to have
12 to determine whether each individual, each particular
13 member accused here, was a member of that single
14 conspiracy.

15 If he was a member of another conspiracy, not
16 one charged in the indictment, then you must acquit him.

17 In determining whether a conspiracy existed you
18 may consider what the evidence shows you including changes
19 of personnel or activity. You may find a single conspiracy
20 even though there were changes in personnel and activities,
21 proving you find that some of the conspirators continued
22 through the life of the conspiracy, and the purposes of the
23 conspiracy continued to be those charged in the indictment.

24 The fact that the parties were not always
25 identical does not mean they were necessarily separate

conspiracies.

If you find during the period charged there was one overall conspiracy but it terminated during that period and another conspiracy was formed, even though the possible purpose and some of the accused or the defendants or the conspirators were the same, if you find basically that there was the one conspiracy charged in the indictment the presumption is that a conspiracy continues until its objectives are reached or it is otherwise terminated.

Let me say it once more. If you find that a conspiracy did exist, then you must individually determine whether each of the conspirators belonged to that conspiracy with knowledge of its purpose. Every defendant has the right to totally individual consideration.

Let's move on to Count 2 and leave the conspiracy. Count 2 charges that on or about the 19t day of February, 1976, in the Southern District of New York, Guillermo Moreno, nickname Pimiento, Hugo Gomez, Jaime Rayo, nickname Rayito, Wilson Arroyo-Angulo, nickname Mata de Miel, Jose Jeroncio Ahon-Casquete and John Doe, nickname El Flaco and The Seaman, the defendants unlawfully, intentionally and knowingly did distribute and posses with intent to distribute, a Schedule II narcotic drug controlled substance, to wit, approximately one kilogram of cocaine.

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Before you can find a named defendant guilty of the crime charged in this count, you must be convinced that the government proved the following elements beyond a reasonable doubt:

1, that on or about the date set forth in the count, the defendant or defendants named in that count, that is the defendants here on trial, distributed or possessed with intent to distribute a narcotic drug controlled substance.

Secondly, that it was done unlawfully, wilfully and knowingly;

And, third, that the substance was in fact a narcotic drug controlled substance.

The first element is the distribution or possess with intent to distribute the drug. What does that mean?

Well, distribute means the actual or the constructive attempting the transfer of the drug.

Possession has its every day common meaning, to have something within your control.

That does not mean that you must have it physically in your possession but merely that you have it within your control. Control is demonstrated by the working relationship or it can be demonstrated by a working

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2 between the person having the physical custody and the
3 person having control.

4 The intent refers to state of mind. Possessed
5 with intent to distribute can fairly be stated to mean
6 to control an item with the state of mind or for the
7 purpose of transferring that item.

8 Possession, as I said, need not be actual
9 possession. You don't have to have it in your pocketbook
10 or wherever it may be. It may be constructive possession,
11 providing that the person who has constructive possession
12 has the power and intent at a given time to assert his
13 dominion, his right or control over the alleged narcotic
14 drug either directly or through somebody else.

15 The government doesn't contend that any of
16 the defendants on trial here actually held in his hand
17 this one kilo of cocaine in February in the Southern
18 District of New York.

19 It charges each of the defendants with possession
20 with intent to distribute on that occasion, but the
21 government contends that one of the persons was still in
22 control of that cocaine and had the authority and the
23 ability to see to it that the cocaine was sold and
24 to demand payment for it.

25 If you believe that one of the defendants charged

1 arbr
2 had such ownership or dominion or control over the cocaine,
3 responsibility for it, that amounts to constructive possession.
4 If you find that, that would be sufficient to meet the
5 possession requirement of the first element.

6 Next, the terms unlawfully, wilfully and
7 knowingly, that means that you must be satisfied beyond
8 a reasonable doubt that the named defendants knew what
9 they were doing, they did it intentionally and voluntarily,
10 as opposed to doing it by mistake or accident or as a result
11 of coercion or inadvertence.

12 It is not necessary to prove that the defendant
13 knew there was a law on the books and it was Section 841,
14 Title 21 or whatever it may be. It is sufficient if you
15 convinced beyond a reasonable doubt that the defendant
16 was aware of the general unlawful nature of the act being
17 done.

18 I said this before, knowledge and intent exist
19 in the mind. It is for you to decide what was going on
20 in each person's mind by considering all of the facts and
21 the circumstances shown by the evidence.

22 The third element, the indictment charges a
23 substantive count and that substance was the one kilogram
24 or approximately one kilogram of cocaine. Apparently
25 there were no other substances.

Now, it goes on to say that that is a Schedule II controlled substance. I will tell you right now as a matter of law cocaine is a Schedule II controlled substance.

When you are dealing with whether it is cocaine or not, I want you to consider the testimony of the chemist. Consider it the same way as I told you before today, the same as any other person.

You may also consider facts and circumstances surrounding the alleged attempted transfer, the deviousness, the high price that he paid, the language in the transaction, and every other thing in the case concerning that fact.

Let me mention this one other statute and that is called the aiding and abetting statute.

In pertinent part it provides that any person who commits an offense against the United States or aids, abets, counsels, commands, induces or procures the commission of an offense against the United States, is punishable as a principal.

You will understand that no defendant will be found guilty unless he did the prohibited act or aided and abetted it unlawfully and knowingly.

In order to find that a defendant aided and abetted another person in distributing or possessing with intent to distribute a narcotic drug controlled substance,

1
2 you must be satisfied that a particular defendant in some
3 way knowingly associated himself with the criminal venture
4 and knowingly participated in it in a manner designed to ac-
5 complish its goal. That is, by some act of his own, he
6 tried to make it succeed, that he had a stake in the venture.

7
8 There are a few general things I want to say to
9 you just before you start your deliberations.

10
11 You have heard some comments about sentences.
12 You are the judges of the facts, you do not impose a sen-
13 tence. That is a heavy burden which the law of our
14 country has imposed upon me and me alone. Don't burden
15 yourselves with doing anything more than judging the
16 facts. Matters of law are my province; matters of sentence,
17 if there be a sentence, is my province.

18
19 You should consider all of the evidence, both
20 the direct evidence and the cross examination. You should
21 consider all of the exhibits. It is your recollection and
22 yours alone that governs, and you must unhesitatingly
23 discard anything which I may have said as a statement of
24 fact which does not accord with your recollection.

25
Let me remind you again the government must
prove its case beyond a reasonable doubt and must prove
each and every essential element of each count beyond
a reasonable doubt. If it succeeds, the verdict should be

1 arbr Charge 2331
2 guilty. If it fails, your verdict should be not guilty.
3 You must consider each count separately.
4 You must render a separate verdict on each count. You
5 must consider each defendant separately and you must
6 render a separate verdict on each defendant on each count.
7 You may render a verdict of guilty as to each
8 count, a verdict of not guilty as to each count, or
9 guilty on one count and not guilty on the other.
10 Some defendants guilty and others not guilty. That
11 is entirely within your province.
12 There are going to be 12 of you who will
13 deliberate. Your verdict, if you are to find a defendant
14 guilty, must be unanimous.
15 I don't want you to enter into deliberations
16 with such pride as you would refuse to change your opinion
17 if you were convinced by the intelligent reasoned argument
18 of your fellow jurors. But in so doing, don't do violence
19 to your own opinion. You are entitled to your own opinion.
20 Each one of you must decide this case for himself or herself
21 after thoroughly exchanging your views with your fellow
22 jurors in reviewing the evidence.
23 If you wish any of the exhibits sent in to you,
24 they will be saved the exhibit which I told the government
25 to put back in its safe. The transcript, if you want it read

1 arbr

Charge

2332

2 to you, will be read to you. It will not be sent into the
3 jury room, however.

4 This is an important case. Every criminal case
5 is an important case. It is important to the government,
6 it is important to the defendants. Please handle it as
7 an important matter and decide this case solely on the
8 evidence and the law as I have charged it to you.

9 Within a few moments you are going to go into the
10 jury room to start deliberations. Bear with me for just
11 a few moments.

12 All counsel, please, in the robing room.

13 (In the robing room.)

14 THE COURT: All right.

15 MR. LEITEL: The only thing that I would take
16 exception to, sir, is I believe the failure of the Court
17 to state to the jury that in determining whether a par-
18 ticular defendant is a member of the conspiracy, the second
19 element, that the acts and statements of any of the others,
20 even during the time of the conspiracy, may not be considered
21 against the others to determine the issue of his membership.

22 MS. CUSHMAN: I specifically remember the
23 Judge charging that and I was going to take exception to
24 his charging that.

25 THE COURT: That is too bad. You both can take

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1 an exception but that is the way it is going to be.

2 What else?

3 MS. CUSHMAN: That was specifically charged.

4 MR. BEAUDUY: I have nothing.

5 MR. GREENE: You said you were going to give
6 a charge with respect to prior inconsistent statements.
7 I requested that charge in writing, prior inconsistent
8 statements of witnesses.
9

10 THE COURT: That is going to stand the way it
11 is.

12 MR. CURLEY: I have no exceptions or requests
13 as to points of law, your Honor. In the light of the length
14 of the Court's charge, I thought it might be helpful if
15 the jury be required to analyze the testimony of Emilio
16 Rivas and if they find that it is the cocaine allegedly
17 possessed in count 2, was not the cocaine obtained from
18 San Francisco, obviously they have to acquit on Count 2.
19 The agreement concerned the alleged transfer of the cocaine
20 and they would have to acquit on Count 1.

21 Similarly, in the aiding and abetting instruction
22 since we know this was basically Emilio Rivas' sale in
23 February, that none of the other defendants were in New York,
24 and your Honor referred to the stake in the venture, I think
25 it would be helpful to say that you are referring to the

activities in New York in February 1976, since there might an overlap of some stake in a venture in December or January in San Francisco, which would not be a substantive act in New York some time later.

MS. CUSHMAN: The government would oppose any additional instruction along that line --

THE COURT: You just won. Go ahead.

MR. LEITEL: I would just like to add something. I wanted to join in Mr. Curley's request.

THE COURT: Everybody joins in all requests.

MR. LEITEL: Let me just make a sentence, sir. I think a charge should be given that the jury, either count, the conspiracy or the substantive count, the jury must be convinced beyond a reasonable doubt that the cocaine that was seized in the Southern District was the same cocaine that was obtained from these defendants in San Francisco.

THE COURT: I am not going to give it because if I do it right now, what I am going to do is highlight it to the jury, something which I don't think should be highlighted at this point. They might go out and in twenty minutes be back and that is unfair. It is unfair to your client and others.

That is my feeling, the Court of Appeals may disagree with me. I tried to be as fair as I could.

1 arbr

2 MR. LEITEL: The only thing is we have one
3 overt act in the Southern District.

4 THE COURT: How many times do you want me to
5 explain what the Southern District is?

6 MR. LEITEL: Yes, that is why it's so essential that
7 the jury be convinced that these drugs were the same drugs
8 that came from San Francisco.

9 THE COURT: No, because that would indicate that
10 I have some belief that drugs were brought from San Francisco
11 to New York. That is not what I want to give to the
12 jury, any impression whatsoever.

13 MS. CUSHMAN: The only thing I think it is a
14 little bit confusing, this kind of charge, the single-multiple
15 conspiracy and there is really no basis for that charge.

16 THE COURT: Oh, no, there certainly is a basis
17 for a multiple conspiracy charge.

18 MS. CUSHMAN: The second thing is the law
19 of the circuit is very explicitly that the two inference rule
20 is not a charge that should be given and the circuit has
21 repeatedly made that statement.

22 THE COURT: When was the last time you read the
23 Phinney case?

24 MS. CUSHMAN: Your Honor, I read that when
25 I was preparing an appeal in the case United States v.

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of everything in this case. Overwhelming evidence so that these men knew each other, snapshots found not by Mr. Rivas, that show Arroyo and El Pulpo and Moreno in one picture, that show Arroyo and El Pupo and Rayo in another picture and those are snapshots, not surveillance photographs.

Surveillance photographs would show Arroyo and Rayo walking down the street together. These defendants knew each other and they knew Rivas and Rivas isn't lying about that.

Rivas was a drug dealer. The defendants can see that Rivas was a drug dealer, he is not lying about that.

He sold real live cocaine, he got it from someplace and he sold it to someone. It came from someplace and where did it come from?

What the defendants are saying is that Rivas isn't lying when he tells you that they all knew each other and he is not lying when he tells you he sold drugs. He is only lying when he says he got the drugs from them.

Before they spend all day doing that, let's spend a few moments on why you can believe Rivas when he says he got the drugs from these defendants.

First, I told you in my opening and it is no

secret at all, that he is a criminal. That he has been convicted for selling drugs, was on special parole, that when he was on special parole he was still selling drugs and lying to his parole officer and the government asks you to consider his testimony with the greatest care. We still urge you to consider his testimony with the greatest care.

And it is no secret at all that he has lied over and over and over again in the past to avoid being deported and recieving a heavy sentence, to avoid many, many bad things. So what you have to do is examine his motive in this trial. He testified here pursuant to a written agreement, which is in evidence as Government Exhibit 39. You heard it once but the microphone was a little bit crazy and I am not sure that you were really able to follow it so I will read it to you again. You can have it and take it back in the jury room, but this is a letter on the United States Attorney's letterhead to Mr. Joseph Stone, Mr. Rivas' lawyer.

It is dated February 14, 1977 and this is the agreement that he has with the government concerning his testimony before the grand jury and concerning his testimony in this case.

(Government Exhibit 39 read.)

Assistant's Summation

dwrl

That's what motivates Mr. Rivas in this trial to tell you the truth, not respect for the oath of office or for the oath that he took.

MR. CURLEY: Excuse me, I can't hear Miss Cushman.

MS. CUSHMAN: He submitted a sworn statement. He admitted to you a sworn statement he submitted and he lied on. Not respect for the judge, not because he always tells the truth to judges, because he's admitted to you that he lied to his lawyer, to the judge, to the probation authorities, to everyone.

He clung to his Charlie story up until the very end. Until he got his 20 years in jail he was loyal to his criminal associates. He was protecting them. He was protecting his own change to serve a few years and get back out on the street like the last time and start doing cocaine again. He admitted those lies to you openly and candidly.

Now, he's motivated to tell the truth precisely to help himself. If he lies there is no agreement, there is no reduction of sentence. He's prosecuted, he's prosecuted for the crimes that he's admitted, for that swim, that pickup in October of 1975 with Cambindo.

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1 dwr2

2 He finally has a motive to tell the truth
3 because he has no choice. The government has its
4 foot on his throat. He is in jail for 20 years and he will
5 be 60 years old before he gets out of jail unless he is
6 doing something about it.

7 Now, defense counsel are going to tell you
8 that he's not interested in telling the truth now.
9 He's only interested in giving up anybody, getting
10 convictions, innocent people, that if he does this
11 cleverly enough he thinks the government is going to
12 live up to its part of the bargain. So let's go beyond
13 that agreement to analyze logically why it is that
14 Rivas testified truthfully before you at this trial.

15 First, where did he get those names? Out of a
16 telephone book? No. Out of some directory? No.
17 He's a narcotics dealer. There is no question
18 about that at all. Where did he get those names?
19 He had to buy drugs from somebody who was real.
20 He had to sell them to somebody who was real.
21 Charlie was a complete fix and nobody ever corroborated
22 anything about Charlie.

23 He went back there, there on the wire,
24 did Charlie show up? Did he get any sound on tape? Was
25 anything about Charlie ever corroborated? No. Charlie

- A84 -

1 dwr3

2 was his story to minimize his guilt to get the lightest
3 sentence possible without turning in any of his
4 associates.

5 He didn't want to be an informant. Do you
6 think he can go back out on the street now and sell
7 another ounce of cocaine? Do you think anybody
8 will buy from him? Do you think anybody will sell to
9 him knowing that he's testified for two weeks at a
10 trial, knowing that he's testified in the grand jury,
11 knowing that he's named everybody that he's dealt with?
12 As far as he's concerned justice has been done.

13 He is never going to sell another ounce of cocaine.

14 The question is now whether justice will be
15 done as far as his associates. And did he frame these
16 people? Did he just choose innocent associates of his?
17 Pick people out of his acquaintances, people that he
18 figured he could corroborate the things that he was
19 telling us?

20 Let's think about that, because defense
21 counsel are going to tell you that he framed these
22 men.

23 First, what possible motive is there in the
24 evidence to suggest that he framed these men? Who has
25 put anything in the record to suggest that he disliked

1 dwr4

2 these people, that he has any hatred toward them, that
3 he has any grudge against them?

4 No. These were people whose relatives lived
5 upstairs, whose families associated with his family. No
6 one has shown any possible motive. And if he had tried
7 to frame them couldn't he have done a better job?
8 Couldn't he have said, "Well, Gomez told me right from
9 the beginning, Gomez told me that he was a drug
10 dealer, that he was from Colombia and that he had
11 personally wrapped these packages. Gomez told me
12 that and that's how he recognized the three packages"?

13 Couldn't he have said, "I personally saw
14 the car keys passed from Jeroncio to Rayito"?

15 Couldn't he have said "Guilllermo told me
16 the names of the ships that he got loads off. Guillermo
17 told me the dates"?

18 Couldn't he have said, "All these 32 packages,
19 these were from Guillermo and Hugo"?

20 No, he said only these three were for
21 Guillermo and Hugo.

22 The mere fact that he never exaggerated
23 anybody's role in this conspiracy is a sign to you that
24 he's not trying to frame these guys. On the other
25 hand, if he lies what does he have to lose?

dwr5

1
2 Do you think Judge Werker, the judge who
3 sentenced him for 20 years while he was still saying,
4 "Well, I was a delivery boy," do you think Judge Werker
5 is going to look kindly on a man who says. "I wasn't
6 a delivery boy. I bought a kilo, sometimes two every
7 six or eight weeks and I sold it as fast as I could get
8 my hands on it."

9 If he lies, if the government doesn't write
10 a memorandum for him do you think that Judge Werker
11 is going to look kindly on his motion to reduce
12 sentence?

13 What else do you know? What Rivas told you
14 was consistent with what you learned from other sources
15 that he only went to the waterfront with Arroyo and
16 Rayo. He never went to the waterfront with Hugo. He
17 never went to the waterfront with Moreno.

18 Mr. Leitel on cross-examination established
19 that Agent Fiorentino never saw Moreno in the waterfront
20 and Rivas never told you he was there.

21 Hugo and Moreno were the heavyweights and
22 stayed back and waited for the drugs to come to them.
23 They didn't go out and expose themselves to the surveillance,
24 to the people that were watching the boats as they came
25 in.

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U.S. ATTORNEY
SO. DIST. OF N.Y.